
SENATE BILL 5628

State of Washington

68th Legislature

2023 Regular Session

By Senators Torres, Rivers, and Muzzall

1 AN ACT Relating to the preservation of water rights for farmland
2 and economic development; amending RCW 90.66.040 and 90.66.065; and
3 declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 90.66.040 and 2001 c 237 s 24 are each amended to
6 read as follows:

7 For the purposes of this chapter, the following definitions shall
8 be applicable:

9 (1) "Columbia-Snake river mainstem" means all water in the Lower
10 Snake river Ice Harbor dam pool, and all groundwater within one mile
11 of the Ice Harbor dam pool high water mark; and Columbia river within
12 the ordinary high water mark of the main channel of the Columbia
13 river between the border of the United States and Canada and the
14 Bonneville dam, and all groundwater within one mile of the high water
15 mark.

16 (2) "Family farm" means a geographic area including not more than
17 six thousand acres of irrigated agricultural lands, whether
18 contiguous or noncontiguous, the controlling interest in which is
19 held by a person having a controlling interest in no more than six
20 thousand acres of irrigated agricultural lands in the state of

1 Washington which are irrigated under rights acquired after December
2 8, 1977.

3 ~~((2))~~ (3) "Lower Snake river mainstem" means all water in the
4 lower Snake river within the ordinary high water mark of the main
5 channel of the lower Snake river from the head of Ice Harbor dam pool
6 to the confluence of the Snake and Columbia rivers, and all
7 groundwater within one mile of the high water mark.

8 (4) "Person" means any individual, corporation, partnership,
9 limited partnership, organization, or other entity whatsoever,
10 whether public or private. The term "person" shall include as one
11 person all corporate or partnership entities with a common ownership
12 of more than one-half of the assets of each of any number of such
13 entities.

14 ~~((3))~~ (5) "Controlling interest" means a property interest that
15 can be transferred to another person, the percentage interest so
16 transferred being sufficient to effect a change in control of the
17 landlord's rights and benefits. Ownership of property held in trust
18 shall not be deemed a controlling interest where no part of the trust
19 has been established through expenditure or assignment of assets of
20 the beneficiary of the trust and where the rights of the family farm
21 permit which is a part of the trust cannot be transferred to another
22 by the beneficiary of the trust under terms of the trust. Each trust
23 of a separate donor origin shall be treated as a separate entity and
24 the administration of property under trust shall not represent a
25 controlling interest on the part of the trust officer.

26 ~~((4))~~ (6) "Department" means the department of ecology of the
27 state of Washington.

28 ~~((5))~~ (7) "Application~~((7))~~," "permit," and "public waters"
29 shall have the meanings attributed to these terms in chapters 90.03
30 and 90.44 RCW.

31 ~~((6))~~ (8) "Public water entity" means any public or
32 governmental entity with authority to administer and operate a system
33 to supply water for irrigation of agricultural lands.

34 ~~((7))~~ (9) "Transfer" means a transfer, change, or amendment to
35 part or all of a water right authorized under RCW 90.03.380,
36 90.03.390, or 90.44.100 or chapter 90.80 RCW.

37 ~~((8))~~ (10) "Withdraw" means to withdraw groundwater or to
38 divert surface water.

1 **Sec. 2.** RCW 90.66.065 and 2001 c 237 s 23 are each amended to
2 read as follows:

3 (1) Transfers of water rights established as family farm permits
4 under this chapter may be approved as authorized under this section
5 and under RCW 90.03.380, 90.03.390, or 90.44.100 or chapter 90.80 RCW
6 as appropriate.

7 (2) A family farm permit may be transferred:

8 (a) For use for agricultural irrigation purposes as limited by
9 RCW 90.66.060 (1) and (2);

10 (b) To any purpose of use that is a beneficial use of water if
11 the transfer is made exclusively under a lease agreement, except that
12 transfers for the use of water for agricultural irrigation purposes
13 shall be limited as provided by RCW 90.66.060 (1) and (2);

14 (c) To any purpose of use that is a beneficial use of water if
15 the water right is for the use of water at a location that is, at the
16 time the transfer is approved, within the boundaries of an urban
17 growth area designated under chapter 36.70A RCW or, in counties not
18 planning under chapter 36.70A RCW, within a city or town or within
19 areas designated for urban growth in comprehensive plans prepared
20 under chapter 36.70 RCW, except that transfers for the use of water
21 for agricultural irrigation purposes shall be limited as provided by
22 RCW 90.66.060 (1) and (2).

23 (3) If a portion of the water governed by a water right
24 established under the authority of a family farm permit is made
25 surplus to the beneficial uses exercised under the right through the
26 implementation of practices or technologies, including but not
27 limited to conveyance practices or technologies, that are more water-
28 use efficient than those under which the right was perfected, the
29 right to use the surplus water may be transferred to any purpose of
30 use that is a beneficial use of water. Nothing in this subsection
31 authorizes: A transfer of the portion of a water right that is
32 necessary for the production of crops historically grown under the
33 right; or a transfer of a water right or a portion of a water right
34 that has not been perfected through beneficial use before the
35 transfer. Water right transfers approved under this subsection must
36 be consistent with the provisions of RCW 90.03.380(1).

37 (4) Before a change in purpose of a family farm water permit to
38 municipal supply purpose or domestic purpose may be authorized, the
39 public water system that is receiving the family farm water permit
40 must be meeting the water conservation requirements of its current

1 water system plan approved by the department of health or its small
2 water system management program.

3 (5) The place of use for a water right transferred under the
4 authority of this section shall remain within: The water resource
5 inventory area containing the place of use for the water right before
6 the transfer; the Columbia-Snake river mainstem; the lower Snake
7 river mainstem; or the urban growth area or contiguous urban growth
8 areas of the place of use for the water right before the transfer if
9 the urban growth area or contiguous urban growth areas cross
10 boundaries of water resource inventory areas.

11 (6) The authority granted by this section to transfer or alter
12 the purpose of use of a water right established under the authority
13 of a family farm permit shall not be construed as limiting in any
14 manner the authority granted by RCW 90.03.380, 90.03.390, or
15 90.44.100 to alter other elements of such a water right.

16 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of
18 the state government and its existing public institutions, and takes
19 effect immediately.

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