

HOUSE BILL REPORT

SSB 5276

As Reported By House Committee On:

Agriculture & Ecology

Title: An act relating to water withdrawals and diversions.

Brief Description: Providing an alternative for persons whose water rights permits were conditioned due to impact on existing rights or established flows.

Sponsors: Senate Committee on Agriculture & Environment (originally sponsored by Senators Swecker, Roach and Oke).

Brief History:

Committee Activity:

Agriculture & Ecology: 3/26/97, 4/3/97 [DPA].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 9 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Linville, Ranking Minority Member; Cooper; Delvin; Koster; Mastin and Sump.

Minority Report: Without recommendation. Signed by 2 members: Representatives Anderson, Assistant Ranking Minority Member; and Regala.

Staff: Kenneth Hirst (786-7105).

Background: Water Use Permits, Transfers, Changes, and Amendments. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water are established under a permit system. However, certain uses of groundwater not exceeding 5,000 gallons per day are exempted from this permit requirement. The permit system is based on the prior appropriation doctrine that "first in time is first in right." Other laws authorize the state to establish minimum flows and levels for streams and lakes. The permit system and the state's laws for managing water resources are administered by the Department of Ecology (DOE).

State law permits the use of water under a water right or a portion of a water right to be transferred, changed, or amended if the transfer, change, or amendment can be made without detriment or injury to existing rights. If a change in place of use

involves surface water supplied by an irrigation district and the water remains in the district, the change need be approved only by the irrigation district. Other transfers, changes, and amendments of water rights must be approved by the DOE.

Consideration of Impoundment. The DOE must, when evaluating an application for a water use permit or for a transfer, change, or amendment of a water right, to take into consideration the benefits of any water impoundment that is included as a component of the application.

Summary of Amended Bill: Consideration of Resource Management. In addition to considering the benefits of impoundment submitted as a component of an application for a water use permit, transfer, change, or amendment, the DOE must consider the benefits of any other resource management technique submitted by the applicant as a component of the application. The DOE must consider the increase in water supply resulting from the impoundment or technique as a means of offsetting the impact of the diversion or withdrawal of water proposed. A proposal for a resource management technique to provide such benefits must be made solely at the discretion of the applicant.

Recharge From On-site Treatment. When evaluating an application for a water right or a transfer, change or amendment to a water right and upon the request of the applicant, the DOE must take into account the recharge of groundwater from septic tanks or other on-site wastewater treatment facilities. The recharge to be considered is an amount up to the amount of water proposed for indoor use. The DOE must determine the amount of recharge to the aquifer that is likely to occur and factor that amount into the decision it makes on the application. Such a water right permit, transfer, change, or amendment is to remain in effect only as long as the water use, including the discharge from indoor uses through such a treatment facility, remains unchanged from that proposed in the original application. (Sections 5 and 7.)

Amended Bill Compared to Substitute Bill: The amendment (1) applies the consideration the DOE is to give to the effects of impoundment or any other resource management technique on those applications that include impoundment or such techniques as a component, and rewords the kind of consideration to be given; (2) removes the sections of the substitute senate bill granting priority processing to certain applications and providing for revisions of applications after permits are conditioned or denied; and (3) requires recharge of groundwater from other on-site wastewater treatment facilities to be treated in the same way that such recharge from septic tanks is treated by the substitute senate bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: (1) If a person's application is denied, the bill allows the person to resubmit the application with mitigation components. The expedited processing authorized by the bill is not intended to alter the priority of the rights of persons in the permit line. (2) The bill acknowledges that there are a variety of techniques for maximizing the use of water when it is available. (3) The state currently does not acknowledge the contribution septic tanks make to groundwater recharge because of the lack of analysis. (4) The recharge from other on-site wastewater treatment facilities should be given the same consideration as the recharge from septic tanks.

Testimony Against: (1) Credit for the recharge of aquifers from septic tanks can be overestimated and should not overlook water quality considerations. (2) The provisions of the bill allowing expedited processing of some applications do violate the first in time is first in right— priority of the other applications. (3) The substitute senate bill should be reworded to ensure that the DOE cannot require impoundment as a component of an application; otherwise, it could require all applicants to do so.

Testified: Senator Dan Swecker, prime sponsor; and Lori Johnson, R.D. Merrill Co., Arrowleaf Destination Resort (in favor). Jenny Stiles, Washington Cattlemen's Association (opposed). Greg Stewart, Rivers Council of Washington (concerns). Dick Ducharme, Yakima Growers and Shippers Association (commented).