

# HOUSE BILL REPORT

## ESHB 1111

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### As Amended by the Senate

**Title:** An act relating to granting water rights.

**Brief Description:** Granting water rights to certain persons who were water users before January 1, 1993.

**Sponsors:** By House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Koster, Delvin, Mulliken, Johnson, B. Thomas and Honeyford).

**Brief History:**

**Committee Activity:**

Agriculture & Ecology: 1/20/97, 1/23/97, 1/27/97, 2/10/97 [DPS];

Appropriations: 2/24/97, 2/27/97 [DPS(AGEC)].

**Floor Activity:**

Passed House: 3/14/97, 67-28.

Senate Amended.

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### HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper; Delvin; Koster; Mastin and Sump.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Regala.

**Staff:** Kenneth Hirst (786-7105).

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### HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Agriculture & Ecology be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; Doumit, Vice Chairman; Benson; Carlson;

Cooke; Crouse; Dyer; Grant; Kessler; Lambert; Linville; Mastin; McMorris; Parlette; Poulsen; D. Schmidt; Sehlin; Sheahan and Talcott.

**Minority Report:** Do not pass. Signed by 9 members: Representatives H. Sommers, Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Chopp; Cody; Keiser; Kenney; Poulsen; Regala and Tokuda.

**Staff:** Nancy Stevenson (786-7137).

**Background:** 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 have been exempted from this permit requirement. The permit system is based on the prior appropriation doctrine that "first in time is first in right." Prior to these enactments, rights to water were obtained in a variety of ways and under a variety of water doctrines.

**Summary of Bill:** A person who placed surface or groundwater to beneficial use for irrigation or stock watering purposes before January 1, 1993, for which a permit or certificate was not issued by the Department of Ecology (DOE) or its predecessors, is granted a water right for that use in the amount beneficially used. The right is granted if the person: (1) files with the DOE a statement of claim for the right during a filing period beginning September 1, 1997, and ending midnight, June 30, 1998; (2) files with the statement of claim certain specified evidence that the water described in the claim was used beneficially before January 1, 1993; and (3) has used the water to the full extent of the claim during at least three of the last five years.

The priority date of the water right is the date a claim for the right is filed. Such a right may not affect or impair a right that existed before the opening of the claim filing period. These statements of claim are to be filed in a new registry of claims. The filing of a statement of claim does not constitute an adjudication of the claim between the claimant and the state or between a water use claimant and others. However, a statement of claim is admissible in a general adjudication of water rights as prima facie evidence of certain aspects of the right.

This granting of a water right does not apply: (1) in an area where similar rights are being adjudicated in a general adjudication proceeding; or (2) in an area that is currently regulated under rules establishing acreage expansion limitations as part of a groundwater management plan. These provisions granting rights and requiring the filing of statements of claim do not apply to water rights established under current law.

**EFFECT OF SENATE AMENDMENT(S):** The uses for which rights to the use of water are granted are expanded to include domestic use supplied by a public water

supply system with up to 150 service connections. Any person claiming a right must have used the water claimed to the full extent of the claim at least one of the last five years (rather than three of the last five years as in the engrossed substitute bill). In addition to other evidence of use, a public water supply systems must provide evidence of service connections existing and using water as of January 1, 1993, including documentation that the homes were built and occupied.

A claimant who has not already filed an application for a water right for the use stated in the statement of claim must file it with the statement of claim. If a claimant does so, the claimant has standing to assert a claim of a water right in a general adjudication proceeding for the use. The DOE or court may authorize the continued use of water only if the claimant meets the requirements of: provisions of the surface water code regarding instream flows set by rule, the processing of an application, the implementation of a water use permit, and the issuance of a water right certificate; the provisions of the ground water code; and a section of the Water Resources Act of 1971 declaring fundamentals that govern the use and management of water. If the applicable requirements are met, a water right certificate is to be issued. The priority date of the right is the date the application for it was filed with the DOE. A decision limiting or denying a claimant's right to continue using water does not constitute a compensable taking because the claimant has no continuing legal right to use water.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** (Agriculture & Ecology) The bill should be expanded to apply to domestic uses of water. Water supply systems wait in the permit application line while exempt wells are drilled around them. The rights they have depended upon for their service may not have an instantaneous flow or similar provision now needed to fulfill a requirement of the Department of Health.

(Appropriations) The committee is requested to support the bill.

**Testimony Against:** (Agriculture & Ecology) (1) The bill is not fair to those who have waited in the permit application line and have not used water illegally. This granting of rights may mean that water is not available for those in the permit line. (2) Water rights may be granted by the bill, but there may be insufficient water to use them. The problem in Whatcom County should be addressed following an assessment of water availability in the area. (3) The bill should not apply to completed general adjudications.

(Appropriations) None.

**Testified:** (Agriculture & Ecology) Dennis King, Deep Rock Community Well (in favor of adding domestic use). Mary Burke; Bob Wiesen and Paul Larsen, Washington Association of Water Systems (commented).

(Appropriations) Representative Mastin.