

# HOUSE BILL REPORT

## SSB 5527

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**As Reported By House Committee On:**  
Agriculture & Ecology

**Title:** An act relating to incentives for water-efficient irrigation systems.

**Brief Description:** Providing incentives for water-efficient irrigation systems.

**Sponsors:** Senate Committee on Agriculture & Environment (originally sponsored by Senators McDonald, Rasmussen, Sellar, Fraser and Anderson).

**Brief History:**

**Committee Activity:**

Agriculture & Ecology: 4/2/97, 4/3/97 [DPA].

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### HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** Do pass as amended. Signed by 8 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Anderson, Assistant Ranking Minority Member; Delvin; Koster; Mastin and Sump.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Linville, Ranking Minority Member; Cooper and Regala.

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

**Background:** Transfers and Relinquishment. State law permits water rights or portions of water rights to be transferred to other uses or places if the transfer can be made without detriment or injury to existing rights. If the transfer involves surface water supplied by an irrigation district, and the transferred water remains in the district, the transfer need be approved only by the irrigation district. Other transfers must be approved by the Department of Ecology (DOE).

In consideration for the financial assistance the state provides for certain water conservation projects, the state may receive a portion of the net water savings resulting from the projects as trust water rights. Although the state may acquire such net water savings, conserved water, and other rights to the use of water for its trust water right system, state statutes do not expressly provide for the transfer of conserved water under other circumstances. Indeed, if a portion of a water right is not beneficially used for five consecutive years without sufficient cause recognized by

statute, that portion of the right is relinquished. However, a related acreage expansion program set by the DOE by rule as part of a groundwater management program is recognized by statute.

Groundwater Planning. The groundwater code permits the department to designate and manage groundwater areas, sub-areas, or depth zones to prevent the overdraft of groundwaters.

**Summary of Amended Bill:** Water Made Surplus. New rules are established for water-made surplus to a water right through the implementation of practices or technologies that are more efficient or more water-use efficient than those under which the right was perfected, and for water-made surplus through a change in the crops grown with the water. These rules apply only to a change of an agricultural use of water to another agricultural use or expanded agricultural use of water.

If the water is not supplied by an irrigation district, the person who holds the water right may use the water on other parcels of land owned by the person that are contiguous to the parcel upon which use of the water was authorized before this change in use. The person who holds the water right is to notify the DOE of the change. The notification provides a change in the person's water right, and the department is to revise its records for the right accordingly.

The provision regarding water-made surplus through changes in crops does not apply to water supplied by an irrigation district. If water supplied by such a district is made surplus through an individual water user's implementation of efficiency practices or technologies, the individual water user does not have a right to the use of the surplus water. However, the surplus water may be used for the benefit of the district generally. The use of such surplus water is regulated solely by the irrigation district and must be approved or authorized by the district. If the use of such surplus water results in the total irrigated acreage within the district exceeding the irrigated acreage recorded with the DOE for the district's water right, the board is to notify the department of the change. The notification provides a change in the district's water right. If an irrigation district is within a federal reclamation project and the use of such surplus water results in the total acreage within the project exceeding the total irrigated acreage recorded with the DOE for the project's water right, the district is to notify the department of the change. The notification provides a change in the project's right. However, the change cannot exceed the total irrigated acreage authorized for the project by the United States.

It is presumed that a change made in a water right regarding the use of surplus water does not impair or interfere with the use of a water right that is senior to the right being changed. However, if within one year of being notified of a change, the department determines that the change would impair or interfere with the use of a senior water right, the department is to notify the person making the change and file a

notice with the local superior court. This notice does not stay the change made to the water right. The superior court reviews the department's determination de novo. The burden of proof in overcoming the presumption of non-impairment is on the department. It can be overcome only through the application of scientific data. At the conclusion of its review, the court may cancel the change, modify the conditions or extent of the change, or affirm the change. The presumption regarding non-impairment does not apply in a case where a person with a water right makes a claim in superior court that a change made under this section by a junior water right holder impairs or interferes with the use of the person's senior water right.

Whether the water is or is not supplied by an irrigation district, the priority date for the right to use the surplus water is the same as for the original water right. These new rules regarding the use of surplus water do not authorize the use of a junior water right in a manner that impairs or interferes with the use of a senior water right. These provisions regarding the use of surplus water do not apply in an area with a groundwater management program with an acreage expansion program set by rule that is in effect on the effective date of this bill.

Transfers in General. The rights expressly protected from being detrimentally affected by a transfer or change do not include those represented by applications for new water rights or undeveloped permits for water use. The Department of Ecology may not initiate relinquishment proceedings regarding a water right for which an application for a transfer or change is filed until two years after the department has approved or denied the application. A provision of the surface water code regarding processing an application for a new water right expressly does not apply to transfers or changes of water rights.

When an irrigation district is requested, under current law, to approve a transfer or change regarding water provided by the district, or when it is requested, under this bill, to approve changes for surplus water, the district must consider the effect of the transfer or change on the financial and operational integrity of the district.

**Amended Bill Compared to Substitute Bill:** The amended bill allows the use of agricultural water made surplus by efficiencies to be used for agricultural purposes; the substitute senate bill allows the portion of water saved in the form of reduced evaporative loss and certain other net water savings resulting from the installation of a water efficient irrigation system to be transferred or changed and it expedites the transfer of water saved from reduced evaporative loss. Under the amendment, the use of the surplus water is not to impair senior rights; under the substitute senate bill, the transfer or change is not to impair existing users or the supply available to other existing uses. The amendment allows the use of surplus water outside of an irrigation district only on certain adjacent parcels. The substitute senate bill requires the portion of the right transferred to be have the same priority date as, but be inferior to, the original right unless specified by contract otherwise; the surplus water used under the

amendment carries the original right's priority date. In general, the expanded use of surplus water under the amendment is, upon notification of the DOE, an amended portion of the right; applications are submitted to the DOE for transferring the evaporative loss and other net water savings under the substitute senate bill. The amendment states that persons with applications for rights or undeveloped rights are not considered to be impaired by transfers of rights. The substitute senate bill requires transfers to be implemented before certificates of rights for the transferred rights are issued. Deleted by the amendment is an emergency clause and a July 1, 1997, effective date.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** (On substitute senate bill) (1) The bill is a carefully measured step in the right direction. (2) Under current law, if a transfer is approved, the DOE is to issue a certificated right for the transfer. However, sometimes the transfer never actually takes place. The bill requires a transfer to be completed before a certificated right for it is issued.

**Testimony Against:** The bill should expressly allow the transfer of water to other lands for other purposes and should expressly protect other uses of water, not just other users of water.

**Testified:** Lori Johnson, Arrowleaf Destination Resort; Sarah Mack, Stoel Rives Law Offices, R.D. Merrill Co. and Arrowleaf Destination Resort; and Ken Slattery, Department of Ecology (in favor). Judy Turpin, Washington Environmental Council (concerns).