

HOUSE BILL REPORT

ESSB 5527

As Passed House - Amended:

March 4, 1998

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: 2/18/98, 2/26/98 [DPA].

Floor Activity:

Passed House - Amended: 3/4/98, 79-17.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. 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: Do not pass. Signed by 1 member: Representative 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 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.

Under legislation enacted in 1997, the DOE is authorized to approve a change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses if the change results in no increase in the annual consumptive quantity of water used under the water right. The annual consumptive quantity is the estimated or actual annual amount of water diverted under the water right, reduced by the estimated annual amount of return flows, averaged over the most recent five-year period of continuous beneficial use of the water right.

Trust Water Rights. The state's trust water right system allows the transfer of water rights to the DOE for management in the system. Trust water rights acquired under the statewide system are to be used by the DOE for instream flows, irrigation, municipal, or other beneficial uses consistent with applicable regional plans for pilot planning areas or to resolve critical water supply problems. Among the water rights that may be transferred to the trust system are rights to certain "net water savings" resulting from water conservation projects for which the state provides financial assistance.

Summary of Bill: A person holding a valid water right who installs a water-efficient irrigation system for use under the right may apply to the DOE for a transfer of the use of the water resulting from the reduction in evaporative loss plus any additional net water savings. The water use may be transferred to: another person for use on other land; or to other land owned by the person with less senior water rights or that lacks a full and sufficient supply of water or for the irrigation of an additional parcel or parcels of land owned by the person. In the latter case, the application must be processed based upon the same criteria as if the transfer were to be made to another person. These "transfers" include a transfer of, change in, or amendment to a surface or ground water right.

The person holding the water right may enter into a contract with another person for the transfer of water saved. The contract may allow for a permanent transfer of a portion of the original water right, or for lease agreements with set expiration dates. The contract must be filed with the DOE with or as a supplement to the application.

In determining the amount that is transferrable, the DOE must allow the transfer of an amount equal to the reduction in the evaporative loss. For this purpose, a "reduction in evaporative loss" is the amount of water that is no longer lost to further use as a result of changing from a conventional irrigation system to a water-efficient irrigation system. It includes the reduction in the amount of water consumed through evaporation during the conveyance and/or application of water to crops and through transpiration by nonproductive plants such as cover crops associated with the change in systems, but it does not include any water that contributed to return flows used to satisfy existing rights.

Transfers of Additional Net Water Savings. In addition, the DOE must evaluate whether there are additional net water savings that result directly from installation of the water-efficient irrigation system that could be transferred to the purchaser without detriment to other existing water users. This "net water savings" is the amount of water that is determined to be conserved and usable within a stream reach for other purposes without: impairment or detriment to water rights existing at the time that a water conservation project is undertaken; reducing the ability to deliver water; or reducing the supply of water that otherwise would have been available to other existing water uses.

Priority Date; Processing Transfers. A person applying for a transfer of a water right must comply with current laws regarding the transfer of surface water rights. The transferred portion has the same date of priority (seniority) as the water right from which it originated. However, the transferred portion of the right is inferior in priority to the original right unless otherwise provided by the parties in a contract. The application must be accompanied by a fee set by current law for such transfers.

The reduction in evaporative loss is a readily transferrable component of net water savings. The DOE may not delay the approval of the transfer of the water that constitutes the reduction in evaporative loss while determining additional net water savings.

The use of water supplied by an irrigation district that is saved through installation of a qualifying water-efficient irrigation system is regulated solely as provided by the board of directors of the irrigation district.

Rules; Calculations. The DOE may adopt rules for processing requests for these water right transfers and for establishing a streamlined procedure to quantify the reduction in the evaporative loss. The methods used for calculating reductions in evaporative loss, including those for determining the exposure of water to evaporative loss using various irrigation systems and the pan evaporation data to be used, must be the methods and data recommended by the cooperative extension service. The rules may establish procedures for the DOE to make preliminary findings that can be used as an initial basis for developing contracts by applicants.

In processing applications for transfers of these portions of water rights, if the DOE is unable to conclusively determine the validity of the original water right, it may include a presumption of validity in the certificate of water rights. The presumption must provide to the contract purchaser the same right to the use of water embodied in the original water right. The presumption may not be used as evidence in a general adjudication proceeding for water rights.

A person with a water right may voluntarily enter into a contract with the DOE. The DOE may use funds authorized for the purchase of water savings made available under these procedures. The methods of calculating the amount of water transferrable to

another party and those for determining the amount of water that is transferrable to the state must be the same. If additional net water saved is available for the benefit of only a stream segment, the calculations may be made on a case-by-case basis while assuring no detriment to existing water users occurs.

Transfers in General. When the DOE approves a transfer or change of a surface water right, it is to issue the applicant an authorization to make the transfer or change. When this action is completed, the DOE is to issue a water right certificate for the transfer or change.

Rules are established for determining when the board of directors of an irrigation district may approve, under current laws, changes in the place of use of district supplied water by an individual water user. The board may approve such a change if it determines that the change: (1) will not adversely affect the district's ability to deliver water to other landowners; (2) will not require the construction by the district of diversion or drainage facilities unless the board finds that the construction by the district is in the interest of the district; (3) will not impair the financial or operational integrity of the district; and (4) is consistent with the contractual obligations of the district.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (1) The bill defines the water saved well and requires the transfers to be approved by the DOE. (2) All water users should be encouraged to conserve water.

Testimony Against: (1) Care should be taken to ensure that seasonal rights to water are not converted to year-round rights to water. (2) More than just the evaporative loss should be readily transferrable. (3) The bill should not be limited to "high value crops" such as orchards. (4) The bill lacks balance between out-of-stream and instream uses. More water needs to be voluntarily returned to the stream, yet there is no money to allow the DOE to purchase transfers as envisioned in the bill. (5) The effect of the presumptions allowed in the bill on the water available for prior water rights is unclear.

Testified: Judy Turpin, Washington Environmental Council; and Mary Burke, Washington Cattlemen's Association (commented on the bill). Ken Slattery, Department of Ecology; and Dawn Vyvyan, Yakama Indian Nation (opposed).