

HOUSE BILL REPORT

ESSB 5703

As Passed House - Amended:

March 10, 1998

Title: An act relating to granting water rights.

Brief Description: Concerning a water right for the beneficial use of water.

Sponsors: Senate Committee on Agriculture & Environment (originally sponsored by Senators Anderson and Morton).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/25/98, 2/26/98 [DPA];

Appropriations: 2/28/98 [DPA(AGEC & APP)].

Floor Activity:

Passed House - Amended: 3/4/98, 67-29;

Passed House - Amended: 3/10/98, 65-30.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 9 members: Representatives Chandler, 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).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Agriculture & Ecology as further amended by Committee on Appropriations. Signed by 22 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; Doumit, Assistant Ranking Minority Member; Benson; Carlson; Cooke; Crouse; Dyer; Grant; Kessler; Lambert; Linville; Lisk; Mastin; McMorris; Parlette; 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: Jeff Olsen (786-7157).

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: Continued Use of Water; Statement of Claim. A procedure is established under which a person who used water for certain uses before January 1, 1993, without a state water use permit or certificate is allowed to continue to use the water on an interim basis. This procedure applies to persons who used the water beneficially for irrigation or stock watering purposes or for domestic uses by a public water supply system with up to 100 service connections. To continue using the water beneficially, the person or public water supply system must: (1) file with the Department of Ecology (DOE) a statement of claim for the use during a filing period beginning September 1, 1998, and ending midnight, June 30, 1999; and (2) file with the statement of claim certain specified evidence that the water described in the claim was used beneficially as claimed before January 1, 1993. The person or system must have used the water to the full extent of the claim during three of the last five years. The current two-dollar fee for filing a water right claim is waived for these claims. This procedure does not apply to the use of water for which an application has been denied by the DOE.

Application for Water Right Permit. If the person or system has not already filed an application for a water right for the use stated in the statement of claim, the person or system must file such an application 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.

Decision on Continued Use. The claimant may continue using the water until the DOE makes a final decision granting or denying the application or, prior to such a decision, a superior court issues a general adjudication decree defining or denying the use. The DOE or court may authorize the continued use of water only if the claimant meets the requirements of: provisions of water law regarding instream flows set by rule, processing an application, perfecting a water use permit, and issuing 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. A claimant has the burden of presenting evidence that the claim and application meet the requirements for granting a water right.

Local Watershed Planning. The DOE may not make final decisions on water right applications associated with such a claim filed in those watersheds where a local watershed planning process is initiated before July 1, 2000. The process must be one established under a chapter of law enacted for watershed planning in 1997 or under the Water Resources Act of 1921. Decisions on applications associated with the claims for water from the watershed must be consistent with such an approved and adopted watershed plan. DOE must notify the applicants of instream flow conditions that their withdrawals must comply with pending the completion of a watershed plan or general adjudication. If the flows have been set by rule, the DOE must use these flows to regulate the withdrawal of water during times when the flows are not being met. Where they have not been set by rule, the DOE must specify the flow conditions in consultation with the Department of Fish and Wildlife that apply to the withdrawals pending completion of the plan or general adjudication. If a watershed plan is not completed within four years or the planning effort is abandoned before the deadline, the DOE may make a final decision on any applications pending in the watershed.

The DOE must consider alternative sources or augmented sources of water for the water use in the application, including water supplied through storage enhancements or through the substitution of the use of ground water for the use of surface water. It may approve the use of such an alternative or augmented source under an application without requiring the application to be resubmitted or affecting its priority date. If a local watershed plan includes locally based standards for water use efficiency, any water right certificates issued for the applications must be conditioned accordingly. If the applicable requirements are met, a water right certificate is to be issued. The priority date of the right is the effective date of the bill.

In areas where such watershed planning is not initiated by July 1, 2000, DOE must make its decision on an application as soon as it is able to do so, taking into consideration its total permit processing workload.

Prohibitions. Such a right of continued water use may not affect or impair a right that existed before the opening of the claim filing period. 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. The court must consider all relevant evidence in making its findings and decision. This right of continued use does not apply in an area that is currently regulated under rules establishing acreage expansion limitations as part of a groundwater management plan, nor in an area where similar rights are being adjudicated in a general adjudication proceeding.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (Agriculture & Ecology) (1) The DOE has found that many people in the Nooksack River area are using water without water rights. Many have been using water and depending on its use for generations; to deny them use of the water would be a disaster to the economy of the area. The bill allows them to continue to use water and grants them standing in a water adjudication proceeding. (2) In this area, people have had to work to remove excess water; they did not think a permit was needed to use the water.

(Appropriations) None.

Testimony Against: (Agriculture & Ecology) (1) The bill prevents the DOE from making a decision on water applications until a local watershed plan has been completed. Since the watershed bill does not set minimum instream flows for four years, these uses will continue without the minimum flows being set. (2) The current law requires a person to file an application and requires the DOE examine the effect of the application on public interest matters such restoring salmon runs. The salmon need the protection provided by the full application and examination process. (3) The full application process is needed for fairness and the appearance of fairness. (4) The DOE is working with the water users in Whatcom County; there is no urgent need for the bill.

(Appropriations) With the addition of domestic uses by Group A and Group B public water supply systems with up to 100 service connections, the fiscal impact may be greater than the fiscal note indicates. It will be difficult for the Department of Ecology to enforce against instream flows and to regulate claims versus water rights.

Testified: (Agriculture & Ecology) Senator Anderson, prime sponsor (in favor). Dawn Vyvyan, Yakama Indian Nation; and Pat Sumption, Friends of the Green River (opposed).

(Appropriations) Judy Turpin, WA Environmental Council.