

# HOUSE BILL REPORT

## ESSB 5703

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### As Reported By House Committee On:

Agriculture & Ecology  
Appropriations

**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)].

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## 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).

**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 Amended 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. 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 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.

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 has commenced by the effective date of this section. The process must be one established under a chapter of law enacted for watershed planning in 1997. If the local planning process results in a watershed plan acceptable to the DOE, decisions on applications associated with the claims for water from the watershed shall be consistent with the watershed plan. If a watershed plan is not completed within four years, the DOE may, after that date, make a final decision on any applications pending in the watershed.

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 was filed with the DOE.

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. 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.

**Amended Bill Compared to Engrossed Substitute Bill:** The amendments provide consistency in referring to the number of years during the last five that water must have been used and correct section references.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** (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.

**Testimony Against:** (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.

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

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## 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).

**Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Agriculture & Ecology:** A new section was added which makes the bill null and void unless specific funding is provided in the Omnibus Appropriations Act by June 30, 1998.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** Ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

**Testimony For:** None.

**Testimony Against:** 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:** Judy Turpin, WA Environmental Council.