

FINAL BILL REPORT

ESHB 1111

FULL VETO

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).

House Committee on Agriculture & Ecology
House Committee on Appropriations
Senate Committee on Agriculture & Environment
Senate Committee on Ways & Means

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: 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 150 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, 1997, and ending midnight, June 30, 1998; 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 one 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.

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. 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 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. However, a decision by the DOE on the application must follow the completion and adoption of a locally developed water resource watershed plan for the area. 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.

Such a right of continued use 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 right to use water may 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.

Votes on Final Passage:

House 67 28
Senate 37 12 (Senate amended)
House (House refused to concur)
Senate 29 15 (Senate amended)
House 69 29 (House concurred)