

FINAL BILL REPORT

SHB 1118

PARTIAL VETO

C 440 L 97

Synopsis as Enacted

Brief Description: Reopening the water rights claim filing period.

Sponsors: By House Committee on Agriculture & Ecology (originally sponsored by Representatives Mastin, Chandler, Johnson, Boldt and Honeyford).

House Committee on Agriculture & Ecology

House Committee on Appropriations

Senate Committee on Agriculture & Environment

Senate Committee on Ways & Means

Background: Code and Pre-Code Rights. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water were 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 the enactment of the 1917 and 1945 codes, rights to water were obtained in a variety of ways and under a variety of water doctrines. The surface water code expressly acknowledges the validity of water rights established prior to its enactment. The use of groundwater under the 1945 act is subject to existing rights.

Registration Required. With the enactment of legislation in 1967, the state required persons with claims of rights to the use of water based on something other than a water right permit or certificate to register the claims with the Department of Ecology. In general, claims had to be filed by June 30, 1974. However, the filing period was reopened on a limited basis in 1979 and again in 1985. A person who failed to file a statement of claim as required is deemed to have relinquished the right.

Summary: New Claim Filing Period. A new period for filing statements of claim for water rights is established. The period begins on September 1, 1997, and ends at midnight on June 30, 1998. This reopening of the filing period is for persons whose water rights pre-date the water codes but who failed to file statements of claims for the rights during the previous filing periods. Existing rights are not to be impaired, and a claim filed during the new filing period is subordinate to rights embodied in water right permits and certificates issued before the claim is filed and is subordinate to claims filed in the state registry during previous filing periods. The new filing

period does not apply to groundwater rights which may be obtained without a permit under current law, rights for which a water right permit or certificate have been issued, or claims that have been previously filed in the state registry. Claims cannot be filed for the withdrawal of water in any area that is the subject of an ongoing general adjudication proceeding for water rights. Nor may they be filed for rights in an area that is currently regulated under rules establishing acreage expansion limitations as part of a groundwater management plan.

The Department of Ecology (DOE) must publish a notice regarding the new filing period during the month of August 1997 and during the filing period. The DOE must also provide information describing the types of rights for which claims must be filed, the effect of filing, the effect of not filing, and other information regarding filings and statements of claim.

Amendments to Claims Already on File. Amendments to statements of claims that are already in the claims registry may be submitted to correct errors in the statements. An amendment must be filed during the new filing period, and the claimant must attest that the amendment does not constitute an expansion of the right for which the original statement of claim was intended.

Prohibition Against Certain Agency Actions. During the period beginning March 1, 1994, and ending with the close of the new filing period, neither the DOE nor the Pollution Control Hearings Board may determine or find that relinquishment of a right has occurred as a result of a person's failure to file a claim. If such a determination or finding has been issued after March 1, 1994, but before the effective date of the bill, the determination or finding is void, and the remedy for the person against whom it was made is to file a new claim or an amendment to a previously registered claim.

Availability of Staff and Information. The DOE must ensure that its employees are readily available for inquiries regarding statements of claim and that all of the information the agency has at its disposal is available to the person making the inquiry. The department must provide water right records to requesters within 10 working days in certain circumstances.

Votes on Final Passage:

House 82 14
Senate 41 8 (Senate amended)
House (House refused to concur)
Senate (Senate receded)
Senate 24 16 (Senate failed)
Senate 33 13 (Senate reconsidered)

Effective: July 27, 1997

Partial Veto Summary: The Governor vetoed the provisions of the bill authorizing the filing of amendments to correct any errors in previously filed statements of claim and establishing a time period during which DOE and the PCHB are prohibited from finding that a water right has been relinquished failure to file a claim.