

# SENATE BILL REPORT

## ESHB 1111

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As Reported By Senate Committee On:  
Agriculture & Environment, March 25, 1997  
Ways & Means, April 7, 1997

**Title:** An act relating to granting water rights.

**Brief Description:** Granting water rights to certain persons who were water users before January 1, 1993.

**Sponsors:** House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Koster, Delvin, Mulliken, Johnson, B. Thomas and Honeyford).

**Brief History:**

**Committee Activity:** Agriculture & Environment: 3/25/97 [DPA-WM, DNP].  
Ways & Means: 4/4/97, 4/7/97 [DPA (AE), DNP].

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### SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.  
Signed by Senators Morton, Chair; Swecker, Vice Chair; Newhouse, Oke and Rasmussen.

**Minority Report:** Do not pass.  
Signed by Senators Fraser and McAuliffe.

**Staff:** Bob Lee (786-7404)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended by Committee on Agriculture & Environment.  
Signed by Senators West, Chair; Strannigan, Vice Chair; Hochstatter, Long, McDonald, Roach, Rossi, Schow, Swecker, Winsley and Zarelli.

**Minority Report:** Do not pass.  
Signed by Senator Fraser.

**Staff:** Cathy Baker (786-7708)

**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 exempt 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:** A person who placed surface or groundwater to beneficial use for irrigation or stock watering purposes before January 1, 1993, for which a permit or certificate was not issued by the Department of Ecology (DOE) or its predecessors, is granted a water right for that use in the amount beneficially used. The right is granted if the person: (1) files with the DOE a statement of claim for the right during a filing period beginning September 1, 1997, and ending midnight, June 30, 1998; (2) files with the statement of claim certain specified evidence that the water described in the claim was used beneficially before January 1, 1993; and (3) has used the water to the full extent of the claim during at least three of the last five years.

The priority date of the water right is the date a claim for the right is filed. Such a right 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 the right to the same extent as statements of claim filed under the Water Rights Claim Registry. DOE is to establish a separate registry of claims for rights claimed under this section.

This granting of a water right does 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. These provisions granting rights and requiring the filing of statements of claim do not apply to water rights established under current law.

**Amended Bill Compared to Substitute Bill:** The substance of the Senate companion bill, SSB 5703, replaced the substance of the bill as passed by the House. The striking amendments: (1) adds existing rural domestic water use to those that are eligible to file statements of claim; and (2) does not include a prohibition on filing claims for uses located in areas regulated as groundwater areas or subareas.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** There are a number of unauthorized water uses across the state with the highest concentration in Whatcom County. Failure to obtain required water rights occurred for a number of reasons. The Department of Ecology could, but has not, and likely will not shut off water supplies for existing water uses for irrigation and public water supply purposes. Many people who have learned they have not gotten valid water rights have filed applications for permits. Prospects for DOE acting on applications is doubtful in the near future. The bill establishes water rights that are junior to all existing rights, including established instream flows. The goal is to provide standing for such uses should a general adjudication be initiated.

**Testimony Against:** Persons who have not obtained valid water rights, and particularly those that have not filed applications, should not have rights established by the Legislature.

The bill is too broad and should be limited only to Whatcom County. Basin planning should be used as the means to eventually provide water for unauthorized uses and authority to issue temporary permits should be granted. Some areas where instream flows have not been established by rule are not protected by this bill. Granting such rights could impair tribal treaty rights to water for instream purposes.

**Testified:** PRO: Karla Kay Fullerton, WA Cattlemen's Association; Paul Parker, WA State Association of Counties; CON: Judy Turpin, WA Environmental Council; Joe LaTourrette, Rivers Council of WA; Ken Slattery, Department of Ecology; Laura Hitchcock, Sierra Club; Dawn Vyvyan, Yakama Indian Nation; Steve Robinson, NW Indian Fisheries Commission.