

SENATE BILL REPORT

SHB 1272

As Reported By Senate Committee On:
Agriculture & Environment, April 2, 1997

Title: An act relating to water transfers.

Brief Description: Establishing water conservancy boards.

Sponsors: House Committee on Agriculture & Ecology (originally sponsored by Representatives Delvin, Chandler, Robertson, McMorris, Honeyford and Mulliken).

Brief History:

Committee Activity: Agriculture & Environment: 3/20/97, 4/2/97 [DPA-WM].

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.

Staff: Bob Lee (786-7404)

Background: The right to use water for a beneficial use remains appurtenant to the land where it is used. A water right may be transferred to another person if it can be made without causing an injury to existing water rights. If the water right is transferred, it becomes appurtenant to the land where it was transferred without any loss of priority.

In order to transfer a water right, an application must be filed with the Department of Ecology. The department must publish notice of the application in a newspaper of general circulation in the area. If the transfer may be made without injuring existing rights, then the department must issue the applicant a certificate granting the transfer.

If an application proposes to transfer a water right from one irrigation district to another, the department must receive concurrence from each of the irrigation districts that the transfer will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of the district. If the transfer will only involve a change in place of use within an irrigation district, then the only approval needed is from the board of directors of the irrigation district.

Interest has been expressed in allowing water transfers to be conditionally approved at the local level.

Summary of Amended Bill: Water conservancy boards may be formed to establish a water transfer exchange through which any person who owns or holds a water right may list the right for sale or transfer.

Formation. A county legislative authority may form a water conservancy board subject to approval by the director of the Department of Ecology. The director of the department has 45 days to approve or deny the resolution creating the board.

A water conservancy board may be initiated in any one of the following ways: (a) the county legislative authority may adopt a resolution on its own motion; (b) a resolution may be presented to the county legislative authority calling for the board's creation from an irrigation district, reclamation district, city operating a public water system, public utility district operating a public water system, or a water-sewer district operating a public water system; (c) a resolution may be submitted from a cooperative or mutual corporation serving 100 or more accounts; (d) a petition may be submitted signed by five or more water-right holders who divert water for use within the county; or (e) any combination of the above.

The resolution or petition must: (1) state the need for the board, (2) identify the geographic boundaries where there is an initial interest in transacting water sales or transfers, (3) describe the proposed method for funding the operation of the board, and (4) include the proposed bylaws that will govern the operation of the board. If a county determines that the resolution or petition is sufficient, it must hold at least one public hearing on the creation of the board. The county may adopt a resolution approving the creation of a board if it finds that it is in the public interest.

The county forwards the resolution approving the creation of the board to the director of Ecology. If the director approves the creation of the board, a description of the necessary training for the commissioners of the board must be included with the notice of approval. The director may adopt rules for minimum training and continuing education for commissioners. Training must include an overview of state water law and hydrology.

Each board consists of three commissioners. Commissioners are appointed by the county legislative authority for six-year terms. Individual water-right holders who divert water for use in the county must be represented on the board. A commissioner cannot participate in board decisions until completing the necessary training. Commissioners serve without compensation but may be reimbursed for travel and training expenses.

Powers. A water conservancy board is considered to be a separate unit of local government and operates on a county-wide basis. A board may sue and be sued, acquire and sell real and personal property, hire employees, and enter into and perform all necessary contracts necessary to carry out its functions. Boards are to be independently funded, as determined by the board but do not have the power of taxation. Boards do not have the power of eminent domain.

A water conservancy board must establish procedures that are consistent with all applicable laws. The board may establish a water transfer exchange through which all or part of a water right may be listed for sale or transfer. Each board is required to maintain and publish all information available to the board concerning water rights listed with the board and any application to the board for a approval of a water transfer. The board may approve transfers of water rights that have not been adjudicated. Water transfers approved by the board must remain within existing beneficial uses. Transfers of water used for agriculture are limited to short- or long-term leases. Any transfer approved by the board is subject to final approval by the director of Ecology.

A transferor and transferee of any proposed water transfer may apply to a board for approval of a transfer if the water that will be transferred is currently diverted or used within the geographic boundaries of the board, or would be diverted or used within the boundaries of the board if the transfer is approved. Applications for transfers must be made on forms provided by the department.

The board may require such information in the application as needed in order to review and act on the proposed transfer. The application must include information sufficient to establish to the board's satisfaction that the transferor is entitled to the quantity of water being transferred. It must also describe any applicable existing limitations on the right to use the water, including the point of diversion or withdrawal, place of use, source of supply, purpose of use, time of use, quantity of use permitted, period of use, and the place of storage.

The board must publish notice of the application and send notice to the applicable state agencies. Any water-right holder who claims a detriment or injury to an existing water right as a result of the proposed transfer may intervene, and other persons may submit comments. The board may approve the application if it is complete, meets the requirements of the law, and does not cause an injury or detriment to existing rights of water-right holders. If the board approves a transfer, it must issue the applicant a certificate conditionally approving the transfer, subject to review by the director.

A person who claims to be the holder of a water right that will be impaired because of the proposed transfer is entitled to a hearing before the board. The board may approve a water right that impairs the rights of a third party if the applicant or impaired party agree on compensation for the impairment.

Once a transfer is approved by the board and the proposed certificate conditionally approving the transfer is issued, the board must submit a copy of the proposed certificate to the department for review. The board must include a report summarizing its findings on which it relied in approving the transfer. The board must also send notice to any person who alleges that his or her water right will be impaired by the transfer, or any person who requested notice. Any person who feels that his or her water right is impaired may file objections to the transfer with the department. The department reviews the proposed certificate for compliance with guidelines adopted by the department and other applicable water transfer laws.

The director has 45 days of receipt to review the board's decision to grant a transfer, and may affirm, reverse, or modify the decision. The director may extend the time period for an additional 30 days upon the consent of the parties. If the director fails to act within the prescribed time period, the transfer is considered approved. Upon approval of the transfer or nonaction by the department, the conditional certificate issued by the board becomes final and valid.

The decision of the department to approve or deny a petition to form a board, or to approve or deny a water transfer may be appealed in the same manner as other water right decisions. Miscellaneous. The county or department is not liable for damages arising out of transfers approved by the board. The requirements necessary for the approval of interties are not

affected. Other water transfer laws are unaffected. Transfers of water between irrigation districts require the concurrence of both irrigation districts.

Amended Bill Compared to Substitute Bill: The general provisions of the bill are retained with the following changes:

Persons who are appointed to the board must be either a resident of the county or a county that is contiguous to the county that the water conservancy board is to serve. Reference is made to specific statutes for determining the amount of reimbursement for travel expenses by the board. Appeals of decisions made by the department are to be handled in the same manner as other water right appeals. Water conservancy board activities are subject to the Open Public Meetings Act. Specific authority is granted for the board to receive grants or adopt fees for processing water right transfers to fund the activities of the board. Instead of mandating rules be established by the department, discretion is provided as to when and if rules need to be adopted.

The exemption to the code of ethics for municipal officers for a commission member to approve the transfer of a water right owned by the commissioner is deleted. Commission members who have an ownership interest in a water right that is proposed to be transferred, or who serves as an employee of a municipally owned water system that has a transfer request before the board, are not to participate in the board's review or decision. The department must report once a biennium to the Legislature on the activities conducted by conservancy boards under this act.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Creating a water conservancy board will foster more water right transfers which will allow water to be used for higher economic uses. In turn, providing alternative means to provide needed water supplies through transfers will reduce the need to obtain new water rights that are increasingly difficult to obtain.

Testimony Against: Water transfers should be handled by the Department of Ecology, and having local water conservancy boards provide conditional approvals, subject to final approval by the Department of Ecology, may not provide adequate safeguards to instream flows.

Testified: Darryll Olsen, Jerry Harper, Columbia-Snake River Irrigation (pro); Linda Crerar, Ken Slattery, Department of Ecology; Steve Wehrly, Muckleshoot Tribe (con); Judy Turpin, Washington Environmental Council; Eric Bergman, Washington State Association of Counties (pro); Mary Burke, Washington Cattlemen's Association; Dawn Vyvyan, Yakama Nation (con).