

FINAL BILL REPORT

ESSB 5703

FULL VETO

As Passed Legislature

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).

Senate Committee on Agriculture & Environment

House Committee on Agriculture & Ecology

House Committee on Appropriations

Background: The surface water code was enacted in 1917 and the ground water code was enacted in 1945. To obtain a water right after these dates requires the filing of an application and the issuance of a water right permit from the state. An exception from the permit requirement is for certain uses of ground water that do not exceed 5,000 gallons per day.

The permit system is based on the prior appropriation doctrine of "first in time is first in right." Prior to the 1917 and the 1945 enactments, water rights were obtained in a variety of ways and under a variety of water doctrines.

Summary: A person who placed surface or ground water to beneficial use for irrigation, stock watering, or public water system with 100 or fewer connections before January 1, 1993, for which a right was not issued, may continue to use the water if a statement of claim is filed by June 30, 1999 and the water has been used at least three years of the five preceding years to the full extent of the statement of claim and if two of the following conditions are met:

1. A statement is signed by two persons, other than the person filing the statement of claim, verifying that water was beneficially used by the claimant before January 1, 1993;
2. A copy of a dated photograph or records that clearly demonstrates the presence of grass or a crop requiring irrigation or livestock requiring water, or receipts of the sale of crops indicating irrigation in the amount claimed was required to produce the crops;
3. Records of equipment purchases or repairs associated with the water use specified;
4. Water well construction records identifying the date the well was constructed for a particular point of withdrawal;
5. Electrical bills directly associated with the withdrawal of the claimed water;
6. Personal records, photographs, journals, or correspondence indicating the use of water as asserted.

Public water supply systems must provide evidence of service connections using water including homes that were built and occupied.

If the claimant has not already filed an application for a water right, such application must be filed with the statement of claim. If both have been filed, the person has standing to assert a claim of water right in a general adjudication.

The claimant may continue to use the water on an interim basis until either the department makes a final decision on granting or denying the application following the completion and adoption of a locally developed water resource watershed plan, or a court adjudication is completed. In areas where a local watershed planning process has been commenced by July 1, 2000, the department must not make a final decision on the application until after completion of the watershed management plan.

The Department of Ecology must notify persons who make claims to the use of water under this chapter of the instream flow conditions that each diversion or withdrawal must comply pending the completion of a watershed management plan or a general water right adjudication. If instream flows conditions have been established by rule, the department uses those flows to regulate the diversion or withdrawal during times that the flows are not being met. For areas that instream flows have not been established by rule, the Department of Ecology must consult with the Department of Fish and Wildlife and determine the flows to which diversions will be conditioned.

In making decisions regarding an application associated with such a claim, the department must consider alternative sources or augmented sources of water including storage enhancements, or the substitution of ground water for surface water.

If a watershed management plan adopts locally based standards for water use efficiency, any certificates of water rights issued thereafter are to be conditioned accordingly.

If a claimant's water right application meets the requirements of the water right permitting statutes, then the department must issue a water right permit. The priority date of such permits is the effective date of this act.

Votes on Final Passage:

Senate	34	15	
House	67	29	(House amended)
Senate			(Senate refused to concur)
House			(House refused to recede)
House	65	30	(House amended)
Senate	32	11	(Senate concurred)