

SENATE BILL REPORT

SB 5703

As Reported By Senate Committee On:
Agriculture & Environment, February 27, 1997

Title: An act relating to granting water rights.

Brief Description: Concerning a water right for the beneficial use of water.

Sponsors: Senators Anderson and Morton.

Brief History:

Committee Activity: Agriculture & Environment: 2/19/97, 2/25/97, 2/27/97 [DPS, DNP].

SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 5703 be substituted therefor, and the substitute bill do pass.

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)

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 of Substitute Bill: A person who placed surface or ground water to beneficial use for irrigation, stock watering, or rural domestic water supply purposes before January 1, 1993, for which a water right permit or certificate was not issued by the Department of Ecology or its predecessor, is granted a water right for that use in the amount that is beneficially used during each of the five years preceding the date the statement is filed, if any 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 that clearly demonstrates the presence of a crop requiring irrigation, 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.
7. Records showing use by public water systems.

The right granted under this section is not to impair existing water rights and must have a date of priority as of the date the statement of claim is filed (after September 1, 1997 but before June 30, 1998).

This procedure does not apply to areas that are subject to a general water right adjudication during the time the statements of claim may be filed.

Substitute Bill Compared to Original Bill: It is further clarified that water rights established pursuant to this act are junior in every respect to water rights established prior to the act.

Appropriation: None.

Fiscal Note: Requested on February 18, 1997.

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

Testimony For: Persons registered water right claims in the early 1970s thinking that such action established a water right. This bill would protect existing water rights and established instream flows because the priority date of the right conveyed under this bill would be junior to all existing water rights. It has been several years since negotiations in the Nooksack Basin were started with little progress being seen. A large portion of the production of agricultural crops in the Nooksack Basin is a result of supplemental irrigation. Several public water systems failed to obtain water rights and homes could be without water if the bill does not pass.

Testimony Against: The bill applies statewide and is not limited to the Nooksack Basin. There are ongoing negotiations in the Nooksack Basin that should be used to resolve the pending disputes. The bill rewards persons who have failed to comply with the permit requirements of the water code by granting water rights even though they were aware of the permit requirements. The bill could cause an adverse impact on instream resources where instream flows have not yet been established.

Testified: Senator Ann Anderson, prime sponsor (pro); Robin Dexter, PSUOA, Whatcom County (con); Henry Bierlink, WCAPC (pro).