

SENATE BILL REPORT

SB 5977

As of February 2, 1998

Title: An act relating to water resource transfers.

Brief Description: Affecting water transfer provisions.

Sponsors: Senators Fraser, Loveland, Fairley, Rasmussen, Spanel, McAuliffe, Thibaudeau and Kohl.

Brief History:

Committee Activity: Agriculture & Environment: 2/3/98.

SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

Staff: Bob Lee (786-7404)

Background: Current law specifically allows water right holders to request a change in the place of use, purpose of use and point of diversion, as long as the change can be made without detriment to existing water rights. Such changes require the approval of the Department of Ecology and is based on whether such transfer would be detrimental to other existing water rights. No specific authorization is contained in current law with regard to allowing a change in the season of use.

Current statutes lack clear authority to allow a surface water right to be changed to a ground water right and vice versa.

Water rights generally remain appurtenant to the land but place of use, purpose of use and point of diversion may be changed with approval of the department. Instream flows established by the department by rule are considered water rights under state law. There is no specific authorization to make changes in instream water rights.

Water right permits frequently specify the land to which the water may be applied. Application of water to other than the land specified may be considered an unauthorized use.

Summary of Bill: The season of use provided in a water right to either surface or ground water may be changed if approved by the Department of Ecology after determining that other existing rights, including minimum flows, will not be impaired. Existing instream flows include those that are established by rule by the department, and those that are established as conditions placed on the issuance of new water withdrawals.

The point of diversion of a water right may be changed from a surface water to a ground water source or vice versa if:

- (1) The two sources are in direct hydraulic continuity;
- (2) The change will not result in enlargement of the original right; and

(3) The change can be made without detriment to existing water rights or minimum flows.

However, if within five years the change results in substantial interference with existing rights, the new point of diversion shall be subordinate to any existing right injured by the change, or the point of diversion may be returned to the last authorized point of diversion without loss priority date.

Authority is established to consider changes in instream water rights, without loss in the date of priority if such change can be made without detriment to other existing water rights.

Approvals of requests to change water rights are to be made available to the public for 60 days for comment, except the time period for public comment for temporary changes of under two years may be reduced to 15 days.

An owner of a water right may apply water to contiguous land as long as the amount of land to which water is applied is not increased. The change can be made without the approval of the department, but notification is required.

A holder of water right may transfer any reclaimed water generated from the underlying beneficial use to another party for another use that is in compliance with standards for reclaimed water. If the transfer results in a change in the place of use, the holder applies to the department for a change in the place of use.

If a governmental action results in or creates a reasonable expectation of a change in the surface level of a surface water source, the owner of the water right may change the point of diversion upon providing written notice of the department. The director must approve the change unless the change will result in injury to other existing rights, including instream flows and rights. If the point of diversion is within 1,000 feet of the original diversion, there is a rebuttable presumption that such rights will not be impaired.

Offers to transfer rights to water must not be used as evidence on the transferor's waste, unreasonable use, nonuse or abandonment of the underlying water right.

If a proposed water right transfer which would cause potential detriment includes a plan for full mitigation, the department may approve the transfer and accompanying mitigation plan.

There is a rebuttable presumption that no injury will occur if a proposed transfer does not increase the consumptive use of the water right. The Irrigation Guide published by Washington State University may be use to determine the amount of water that is consumptively used.

A person transferring a water right to be used for instream purposes is to file a notice with the department. The transfer may be temporary or permanent and may transfer all or part of the right initially granted.

The Department of Ecology must review the trust water rights program and identify any administrative and statutory barriers to its greater use for augmenting instream and off-stream

uses. A report must be filed with the appropriate standing committees of the Legislature by December 15, 1997.

Funds authorized under Referendum 38 for improvements to water systems may be used to purchase water savings from willing sellers or lessors made available by installation of water-efficient irrigation systems. The amount of water available for transfer is to be determined in the general water right transfer statutes.

Regional water banks may be established by cities, counties or other local agencies to facilitate voluntary water transfers.

Application for changes and transfers of water rights must be accorded priority. The department must adopt a goal of making decisions within 60 days on applications limited to a single season and 90 days for other applications. The department may make tentative determinations of the validity of water rights that involved in or affected by a proposed water right transfer.

The department must create and maintain a water transfer registry that contains the final agreements concerning water right transfers. Water right adjudication decrees are to be updated to include information provided to the water transfer registry.

When land with water rights are sold, the seller must notify the department of water rights involved in the transaction. The notice must be on a form prescribed by the department. Notice must be provided when land is subdivided or short platted that includes water rights.

Appropriation: None.

Fiscal Note: Requested on January 27, 1997.

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