

HOUSE BILL REPORT

HB 1957

As Reported By House Committee On:

Agriculture & Ecology
Appropriations

Title: An act relating to water right transfers, changes, and amendments.

Brief Description: Changing water right transfer, change, and amendment provisions.

Sponsors: Representatives G. Chandler, Linville, Mastin, Reardon, Sump, Schoesler and Ericksen.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/22/99, 3/2/99 [DPS];

Appropriations: 3/5/99, 3/6/99 [DP2S(w/o sub AGECE)].

Brief Summary of Second Substitute Bill

- Requires each application for a water right transfer to be conditionally approved by a water conservancy board before it can be acted upon by the Department of Ecology if a board exists for the area of the water right, no longer requires the Department of Ecology approval for the creation of such boards and allows the creation of multi-county boards.
- Allows an approval by a board of seasonal or temporary changes in the place of use or point of diversion to be final, if it is consistent with DOE rules, and allows certain seasonal and temporary changes to be done by notification only.
- Requires training for commissioners of boards to be provided by or through the Department of Ecology.
- The Department of Ecology is required to process applications for transfers as a matter of higher priority than applications for new water rights.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Koster, Republican Vice Chair; Anderson; B. Chandler; Delvin; Fortunato; Grant; Reardon; Schoesler; Stensen; Sump and Wood.

Staff: Kenneth Hirst (786-7105).

Background:

A water right is appurtenant to the land or place that the right is used. However, the surface and ground water codes allow the right to be changed, transferred, or amended to change the place of use, the point of diversion or withdrawal, or purpose of use. These changes, transfers, and amendments to existing surface and ground water rights are often referred to collectively as "transfers." Such a transfer requires the approval of the Department of Ecology (DOE) and must be done without detriment or injury to existing rights.

Legislation enacted in 1997, authorizes a county to create a water conservancy board subject to approval by the DOE. Such a board consists of three commissioners who are appointed by the county for six year terms. Such a board may give preliminary approval to water transfers, subject to final approval by the DOE. If the DOE fails to act on the board's approval within certain deadlines, the board's action is final. A commissioner may not participate in board decisions until he or she has successfully completed required training, which must include training in state water law and hydrology.

In a case decided by the State Supreme Court in 1993, one of the issues discussed by the court was the range of "existing rights" to be protected from detriment or injury under the statute authorizing amendments to groundwater rights. Specifically, do individuals in the application line for new water right permits have "rights" that must be considered? The court concluded that an individual's place in line for water right permits is an existing right that needs to be considered.

In general, the statutes governing applications for new water right permits require the DOE to make determinations as to whether water is available for the proposed use, what beneficial uses the water is to be applied to, and whether the requested use conflicts with existing water rights or threatens to prove detrimental to the public interest.

Summary of Substitute Bill:

The DOE may process applications for transfers of existing water rights as a matter of higher priority than applications for new water rights. An application for a new water

right for which a permit decision has not yet been made is not considered in determining the rights to be protected from injury, impairment, or detrimental effect by the transfer.

The creation of water conservancy boards is not subject to approval by the DOE. The county legislative authorities of two or more counties may create one water conservancy board to serve the counties or may expand an existing board to serve more than one county.

If a water conservancy board has been created for the area in which a water right is used, an application for a transfer of the right must first be reviewed by the board. In such a case, the DOE may conduct its review of the transfer only if the board conditionally approves the transfer. Decisions on applications must be made by the board in the order in which the applications are filed with it. The DOE must make decisions regarding the conditional approvals forwarded to it by a board in the order in which they are filed with the DOE by the board. However, if additional information is required regarding an application being reviewed by the board or the DOE, either may proceed to the next applications in line while awaiting that additional information.

A person is expressly authorized to transfer up to the total amount of water diverted or withdrawn under the person's water right. However, the total of the amounts diverted or withdrawn under the transfer and under the remaining right cannot not exceed, on an annual basis, the amount diverted or withdrawn under the original right.

Training courses for commissioners of the boards must be provided by or through the DOE. The DOE must provide the initial training required for commissioners at training sessions held once each year. References to the "transfers" that a water conservancy board may conditionally approve more consistently include references to amendments to groundwater rights and temporary changes. The "manner" of use for which a transfer of a groundwater right may be obtained is a transfer of the "purpose" of use for the right.

Substitute Bill Compared to Original Bill: Added by the substitute bill are the provisions: expressly authorizing the transfer of up to the total amount of water diverted or withdrawn under a water right; requiring a transfer to be initially processed by a water conservancy board only if such a board has been established for the place the water right is currently used; allowing the DOE or a board to consider the next application or applications while awaiting information; removing the authority of the DOE to approve or disapprove the creation of water conservancy boards; allowing water conservancy boards to serve more than one county and requiring the DOE to provide the initial training required for commissioners at training sessions held once each year.

Appropriation: None.

Fiscal Note: (Substitute bill) Requested March 2, 1999.

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

Testimony For: (Original Bill) (1) Much of the economic development of the state will soon depend on transfers of existing rights, not new water rights. Transfers need to be processed faster; passing the applications through conservancy boards will do that. (2) The DOE does not encourage setting up new boards and has turned one county's proposal down. It wants to set up boards only as pilot projects. (3) Providing more funding will not necessarily solve the transfer processing problem. It will require leadership and a structure that will give it priority. (4) The DOE wants to restrict transfers. It should not be in charge of water management. (5) The boards work and they can charge fees to process applications; it is best to do transfers at the local level. (6) Temporary transfers under the current administrative structure are not useful when it takes so long for them to be processed.

(Concerns-Original Bill) (1) There should be some way for a board to pass over inactive applications and go on to the next in line. (2) The rights of applicants for permits for new water rights should be considered when inter-basin transfers are being considered. (3) If only boards can start the processing of a transfer, there should be a transition period for those already filed with the DOE. (4) Small counties should be able to band together into one conservancy board. (5) Separating the transfer and permit lines helps the state buy water rights, but separating the lines should be done as simply as possible. (6) It would take all of the DOE's water staff to provide staff support for just a dozen water conservancy boards. (7) The substantive standards that apply to transfers should be altered. Changes to adjacent lands should be allowed without approval if there is no increase in irrigated acreage. Surface water rights should be able to be changed to groundwater rights in response to endangered species requirements. (8) Something should be done about the current appeals process. There should be a rebuttable presumption that transfers will not cause injury.

Testimony Against: None.

Testified: (In support-Original Bill) Eric Johnson, Washington Public Ports Association; Dick Ducharme, Yakima Growers and Shippers Association, Wenatchee Traffic Association, and Building Industry Association of Washington; and Darryll Olsen, Pacific Northwest Project and Columbia/Snake Irrigators' Association.

(In support with concerns) Karla Fullerton, Washington Cattlemen's Association; Kathleen Collins, Washington Water Policy Alliance; Kristin Hart Sawin, Washington Public Utility District Association; and Sarah Mack, Arrowleaf.

(Concerns-Original Bill) Judy Turpin, Washington Environmental Council; Ken Slattery, Department of Ecology; Steve Wehrly, Muckleshoot Tribe; and Dawn Vyvyan, Yakama Nation.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Ecology. Signed by 29 members: Representatives Huff, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Alexander, Republican Vice Chair; Doumit, Democratic Vice Chair; D. Schmidt, Republican Vice Chair; Barlean; Benson; Boldt; Carlson; Clements; Cody; Crouse; Gombosky; Kagi; Keiser; Kenney; Lambert; Linville; Lisk; Mastin; McIntire; McMorris; Mulliken; Parlette; Rockefeller; Ruderman; Sullivan; Tokuda and Wensman.

Minority Report: Without recommendation. Signed by 2 members: Representatives Grant and Regala.

Staff: Jeff Olsen (786-7157).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Agriculture & Ecology: The second substitute removes provisions of the first substitute bill that authorize the transfer of up to the total amount of water diverted or withdrawn under a water right. The Department of Ecology is required, rather than authorized, to process applications for transfers as a matter of higher priority than applications for new water rights. Consideration of the effect of a transfer on applications for new rights is waived only for transfers that remain within the confines of a watershed. Seasonal or temporary changes in the place of use or point of diversion to be approved by a board without additional approval by the Department of Ecology if the approval is in conformity with the department's rules regarding such delegated approvals. The place of use of a water right may be changed by notification, rather than through the approval of a transfer, if the change is to contiguous lands owned or leased by the holder of a water right, the total amount of irrigated acreage is not increased, and certain other conditions are met. A record of decision and report regarding each application denied by a board must be submitted to the Department of Ecology for review in the same manner as those approved by the board. The second substitute identifies the order in which transfer applications must be considered for applications originally filed with the Department of Ecology and now to be considered by a water conservancy board, requires notification of the applicants whose applications are removed by the board, and allows applicants to withdraw their applications. The "manner" of use for which a transfer of a groundwater right may be obtained is a transfer of the "purpose" of use for the right. Decisions on transfers made by the Department of Ecology or its water master in an area not within the jurisdiction of a

water conservancy board must be made, with certain exceptions, in the order in which the applications for the transfers were filed. If specific funding is not provided for this bill in the omnibus budget, the act is null and void.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Second Substitute Bill: Ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Testimony For: None.

Testimony Against: (Substitute) Sections 1 and 4, which allow separate lines for transfers as opposed to the allocation of new water, should not be enacted. Sections 2 and 5 make substantive changes to water law and set up the opportunity for potential conflicts by allowing transfers of water that may not be supported by a valid water right.

Testified: (Against) Judy Turpin, Washington Environmental Council.