

Agriculture & Ecology Committee

SSB 5100

Brief Description: *Expediting the processing of pending applications relating to existing water rights.*

Sponsors: *By Senate Committee on Environment, Energy & Water (originally sponsored by Senators Fraser, Swecker, Regala, Eide, Rasmussen, Gardner, Haugen, Franklin, McAuliffe, Jacobsen and Fairley).*

Brief Summary of Substitute Bill

- *Until June 30, 2005, allows applications for modifying existing water rights to be processed separately from applications for new water rights and does not protect the latter applications from being impaired by decisions regarding the existing rights.*
- *Alters the method used to calculate the amount of water governed by a water right that may be transferred or changed to enable the irrigation of additional acreage or the addition of new water uses.*

Hearing Date: *3/29/01*

Staff: *Kenneth Hirst (786-7105).*

Background:

Modifying Existing Water Rights. *There are several fundamental elements of a water right. One is its priority (or seniority). Other elements of the water right include: the amount of water that may be withdrawn from a particular water source under the right, the time of year and point from which the water may be withdrawn, the type of water use authorized under the right (such as an agricultural or municipal use), and the place that the water may be used. Certain of these elements of a water right may be modified with the approval of the DOE if the modification would not impair other existing water rights. In Schuh v. Department of Ecology (100 Wn.2d 180 (1983)), the state's Supreme Court requires the DOE to consider the rights represented by applications for new water permits that have not yet been granted or denied when it considers applications for modifying existing rights.*

This currently has the effect of tying together the DOE's consideration of the two types of applications. An approved modification does not affect the priority date of the right. Modifications in water rights are referred to in statute as transfers, changes, and amendments of water rights.

In 1997, the transfer and change provisions of the Surface Water Code were amended. The amendment stated that a change in the place of use, point of diversion, or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if the change results in no increase in the annual consumptive quantity of water used under the water right. To calculate the annual consumptive quantity, the estimated or actual annual amount of water diverted under the water right is reduced by the estimated annual amount of return flows. The average of this amount over the most recent 5 year period of continuous beneficial use is the annual consumptive quantity. (Section 801, Chapter 442, Laws of 1997 and RCW 90.03.380.)

Summary of Bill:

"Two Lines." Pending applications for new water rights are not entitled to protection from impairment when an application relating to an existing surface or ground water right is considered. Applications relating to the existing water rights may be processed and decisions on them may be rendered independently of the pending applications for new water rights within the same source of supply. An application relating to an existing water right may be processed ahead of a previously filed application when sufficient information necessary for the investigations, determinations, and findings on the previously filed application is not available and the applicant for the previously filed application is sent a written notice and explanation. The previously filed application does not lose its priority date.

This two lines authority expires June 30, 2005. In providing this authority, the Legislature does not intend to divert resources away from, or to deter processing of, applications for new water rights. (Section 1.) Nothing in the Surface Water Code regarding existing water rights, including this authority, nor assigning priority by rule processing applications authorizes either a halt to processing new applications or a halt to processing nonpriority applications. At least half of DOE's resources available for processing applications must be devoted to processing nonpriority applications. (Section 3.)

Each January 1st from 2002 to 2004, the DOE must report to the Legislature on the results of processing applications under these new, two lines authorities. In the report for 2004, it must evaluate and make recommendations regarding the two lines process. (Section 2.)

"Annual Consumptive Quantity." The method of calculating the annual consumptive quantity of water under a water right that may be changed or transferred is altered. Rather than being the amount averaged over the most recent 5 years of continuous use, it is averaged over the 2 years of greatest water use within those 5 years.

Appropriation: None.

Fiscal Note: Requested on March 22, 2001.

Effective Date: The bill contains an emergency clause and takes effect immediately.