

SENATE BILL REPORT

EHB 1350

As Reported By Senate Committee On:
Environment, Energy & Water, April 21, 2001

Title: An act relating to appeals of water right decisions regarding water rights subject to a general stream adjudication.

Brief Description: Changing water right appeals procedures for rights subject to a general stream adjudication.

Sponsors: By Representatives G. Chandler and Linville.

Brief History:

Committee Activity: Environment, Energy & Water: 4/20/01, 4/21/01 [DPA].

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & WATER

Majority Report: Do pass as amended.

Signed by Senators Fraser, Chair; Regala, Vice Chair; Eide, Hale, Honeyford, Jacobsen, McDonald, Morton and Patterson.

Staff: Genevieve Pisarski (786-7488)

Background: A general stream adjudication in superior court is the procedure established by law for conclusively determining the existence of a water right or claim, including its validity, quantity, priority, and other elements. The procedure established by law for applications to change or transfer a water right calls for a decision by the Department of Ecology that is appealable to the Pollution Control Hearings Board, followed by judicial review. A water right or claim that is subject to a general stream adjudication may also, at the same time, be the subject of an application for a change or transfer. Jurisdiction over appeals relating to such a water right or claim is not conclusively established.

Summary of Amended Bill: The intent of the Legislature to fully preserve the role of the Pollution Control Hearings Board (PCHB), except as specifically provided in this act is stated, and clarifying language to that effect is added.

It is clarified that the existing limitation on the jurisdiction of the Pollution Control Hearings Board in respect to general adjudications of water rights refers only to the conduct of the adjudication proceedings that are delegated to the Department of Ecology under the general adjudication statutes.

Petitions for judicial review from the PCHB or as provided below of department decisions on transfers or changes of water rights that are subject to an active adjudication must be filed with the superior court conducting the adjudication to be consolidated with the adjudication. A party to an adjudication becomes a party to an appeal from the PCHB only if it files or is served with a petition.

For an active general adjudication begun before October 13, 1977, the superior court itself reviews the department's tentative determinations regarding validity and extent of the water right consistent with the provisions of the administrative procedures act, except that review is de novo. Service and notice is governed by the provisions of the Administrative Procedure Act. It is expressly stated that standing is not limited to parties to the adjudication.

The court certifies all other issues to the PCHB.

Appeals must be scheduled to afford all parties full opportunity to participate before the adjudication court and the PCHB. Appeal from the PCHB is to the court conducting the general adjudication.

These provisions must not be construed to affect or modify any rights of an Indian tribe, federal agency, or other person or entity arising under federal law.

Nothing will be construed to affect any existing right of a federally recognized Indian tribe to protect its federally reserved water rights in federal court.

Amended Bill Compared to Original Bill: The intent of the Legislature to fully preserve the role of the Pollution Control Hearings Board, except as specifically provided in this act, is stated, and clarifying language to that effect is added.

A party to an adjudication becomes a party to an appeal from the PCHB only if it files or is served with a petition.

It is expressly stated that standing is not limited to parties to the adjudication.

Appeals must be scheduled to afford all parties full opportunity to participate before the adjudication court and the PCHB.

The PCHB is not limited to 180 days.

Nothing will be construed to affect any existing right of a federally recognized Indian tribe to protect its federally reserved water rights in federal court.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill simplifies the process and makes it more efficient. Removal of the 180-day timeline restores equity for all parties and doesn't increase PCHB workload. There are concerns about sovereign immunity and jurisdiction over Indian tribes.

Testimony Against: None.

Testified: Steve Gano, Bill Clarke, Trend West (pro); Josh Baldi, WA Env. Council (pro); Dawn Vyvyan, Yakama Nation (neutral); Jim Halstrom, WA Water Policy Alliance, WA State Hort. Assn. (pro).