

SENATE BILL REPORT

SB 5100

As Reported By Senate Committee On:
Environment, Energy & Water, February 20, 2001

Title: An act relating to expediting the processing of pending applications relating to existing water rights by clarifying when pending applications for new water rights are not existing rights, allowing pending applications relating to existing water rights to be processed independently of pending applications for new water rights, and allowing applications to be processed ahead of previously filed applications that have insufficient information.

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

Sponsors: Senators Fraser, Swecker, Regala, Eide, Rasmussen, Gardner, Haugen, Franklin, McAuliffe, Jacobsen and Fairley.

Brief History:

Committee Activity: Environment, Energy & Water: 1/25/01, 2/20/01 [DPS, DNP].

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 5100 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chair; Regala, Vice Chair; Eide, Jacobsen and Patterson.

Minority Report: Do not pass.

Signed by Senator Morton.

Staff: Genevieve Pisarski (786-7488)

Background: As a result of growing population and economic development, applications to the state for new water rights and for changes and transfers of existing water rights have continued to increase, as has the complexity of the analysis that is required, in order to render decisions on them. Among other requirements, state law allows approval of an application, only if it will not impair any other existing water rights. By law, applications for new water rights that have not yet been approved must be treated as existing rights and applications must be considered in the order of the date on which they were filed. For purposes of efficiency, however, the law does allow all applications for the same source of supply to be analyzed as a group, even though there may exist older applications whose group, according to source of supply, is still awaiting consideration. Due to limited funding, increasing numbers of applications, and the complexity of analysis, which results both from large numbers of pending applications and large numbers of existing rights, there is an accumulation of over 7,000 pending applications, many of which will not be able to be considered for many years.

Summary of Substitute Bill: The Legislature recognizes that the delay in processing water rights applications is delaying people's plans and causing economic harm. The Legislature

intends to remove complexity created by judicial interpretation and to make the law more clear and does not intend to deter the processing of new water rights. Annual consumptive quantity is calculated by averaging the two years of greatest use within the most recent five years of use. Applications for new water rights that have not yet been approved are not entitled to protection from injury by changes and transfers of existing water rights. Applications for new water rights and those for changes and transfers of existing water rights within the same source of supply can be considered independently. Applications can be considered ahead of previously filed applications that do not have sufficient information for a decision. The latter receive notice and retain their priority date. Sufficient information means information that is necessary to the investigations, determinations and findings required by law. The department reports annually on application processing under the new provisions and makes recommendations in its final report on January 1, 2004. The new provisions for how applications are processed are in effect through June 30, 2005. Any water rights decisions made under them remain valid. The processing of new water rights is not stopped. The processing on nonpriority applications is not stopped, and at least half of the resource for processing is used for nonpriority applications.

Substitute Bill Compared to Original Bill: Statements of findings and intent are added. The current calculation of annual consumptive quantity is changed. The scope of sufficient information is defined. Annual reporting and final recommendations on January 1, 2004 are added. Expiration of the new provisions on June 30, 2005 and the saving of any water rights decisions made under them are added. Requirements that processing of new water rights is not stopped and that processing of non-priority applications is not stopped and at least half of the resources for processing is used for non-priority applications are added.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Existing requirements must be improved. The number of applications filed has increased. Flexibility to make water rights changes is essential in water-short areas. Reporting on how the department actually makes water rights decisions under the provisions that are intended to expedite processing of applications is needed, and any new authority it receives should expire and be revisited. Applications for new water rights should not be ignored. Protection of instream flows and the public interest must be part of making changes and transfers.

Testimony Against: There is potential for abuse of new authority. The department should be prohibited from requiring voluntary relinquishment of water rights in exchange for priority processing. Other policy changes are needed as much or more than the proposed changes.

Testified: Don Ahrenholtz, Thurston Assn. of Realtors (pro); Paul K. Gray, Gray's Electric (pro); Ken Slattery, WDOE (pro); Kathleen Collins, WA Water Policy Alliance (concerns); Tim Boyd, Columbia-Snake River Irrigations Assn. (con); Dave Williams, Assn. of WA Cities; Hertha Lund, WA Farm Bureau (con); Paul Parker, WA State Assn. of Counties (pro); Josh Baldi, WA Environmental Council (neutral).