

SENATE BILL REPORT

SB 5361

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

Title: An act relating to trust water rights.

Brief Description: Regarding instream flows and trust water rights.

Sponsors: Senators Parlette, Honeyford, Hewitt, Hale, Morton, Swecker, Hochstatter, Long, Oke, McCaslin, Sheahan and Fraser.

Brief History:

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

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 5361 be substituted therefor, and the substitute bill do pass.

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

Staff: Genevieve Pisarski (786-7488)

Background: The state has established a trust water rights program for the Yakima River Basin and one for the rest of the state. Both programs allow the state to acquire water rights, hold them as trust water rights, and reallocate them to other uses, including instream flows. The water rights can be acquired on a permanent or a temporary basis, by purchase, gift, or other means, excluding condemnation. Both programs provide for acquisition of trust water rights as part of public funding of conservation measures. Both programs are exempt from the approval process otherwise required for changes or transfers of water rights and have their own process.

Summary of Substitute Bill: Where aquatic species are listed under the federal Endangered Species Act and instream flows are needed for those species, the holder of a water right may donate all or part of the water right to the trust water right program on a permanent or temporary basis for instream flows, and the Department of Ecology must accept the donation on the terms prescribed by the donor. Terms must be relevant to protecting the donor's interest and must be mutually acceptable. The extent of the water right is determined by the extent to which it was used during any of the preceding five years, and the total of the portion donated and the portion retained cannot exceed that amount. If a determination by the department that use of the donated trust water right impairs existing water rights is upheld on appeal, the donation is altered to eliminate the impairment. A donated water rights' status as a trust water right is not evidence of the validity or quantity of the right. Existing requirements for use of a trust water right do not apply, except that notice must be published, when the trust water right is first used. Trust water rights donated for instream purposes

must be managed so that they qualify as federal tax deductible gifts. Trust water rights are not subject to relinquishment.

Substitute Bill Compared to Original Bill: A requirement is added that the donor's terms must be relevant to protecting the interest retained by the donor and mutually acceptable. The provision is added that a donated water right's status as a trust water right is not evidence of its validity or quantity.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: There should be some latitude to negotiate the terms of the donation, which should not make unreasonable demands. Potential impairment of other water rights should be determined prospectively, as it is for other trust water rights. This proposal is consistent with existing law and practice. It will provide needed assurances, encouragement, and tax benefits to use the trust water rights program to leave water instream without losing an established water right. This is water for both people and fish. It is important to assure that the donated water is water that was previously being taken out of the stream.

Testimony Against: None.

Testified: PRO: Senator Parlette, prime sponsor; Ken Slattery, Dept. of Ecology; Darryll Olsen, Benton Co. WCB; Steve Wehley, Muckleshoot Tribe (concerns); Kathleen Collins, WA Water Policy Alliance; Carl Samuelson, WDFW; Grant Nelson, Assn. WA Business; Mike Moyer, Joe Mentor, Jr., Trendwest Resorts; Jerry Peltier, City of W. Richland; Josh Baldi, WEC (neutral).