

FINAL BILL REPORT

SSB 5910

C 240 L 01
Synopsis as Enacted

Brief Description: Regarding temporary nonuse of a water right.

Sponsors: Senate Committee on Environment, Energy & Water (originally sponsored by Senators Fraser and Honeyford).

Senate Committee on Environment, Energy & Water

Background: Under current law, if a person abandons a water right, or, if a person voluntarily fails, without sufficient cause, to use a water right for five successive years, the water right reverts back to the state. Abandonment is a common law doctrine, and it requires both the intent to abandon and the actual nonuse of a water right, although long periods of nonuse raise a rebuttable presumption of intent to abandon. Voluntary failure, without sufficient cause, to use a water right for five successive years is a standard established by the state's relinquishment statute. Circumstances that are considered sufficient cause are also established by the statute and include nonuse as a result of drought or other unavailability of water and of the operation of legal proceedings, among others. The state Supreme Court has construed the statutory provisions relating to sufficient cause narrowly. Voluntary failure is not defined in the statute. Webster's Dictionary defines "voluntary" as being without compulsion, on purpose, or by choice.

Summary: Sufficient cause for nonuse of water includes temporarily reduced need for irrigation due to weather conditions, including precipitation and temperature, so long as facilities are maintained for use of the full amount of the water right. Weather conditions must warrant reduction in water use.

Sufficient cause for nonuse also includes a contract or agreement to buy back electricity needed to use water for irrigation; conservation of water under the Yakima River Basin Water Enhancement Project, so long as the water is reallocated as required by the project; use of transitory return flows, if these are measured or reliably estimated using a methodology accepted by the Department of Ecology; and crop rotation. Crop rotation is defined as temporary change in type of crop as a result of generally recognized farming practices.

Votes on Final Passage:

Senate	37	10	
House	94	0	(House amended)
Senate	42	0	(Senate concurred)

Effective: May 11, 2001