

# HOUSE BILL REPORT

## SHB 1113

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### As Amended by the Senate

**Title:** An act relating to irrigation district boards of joint control.

**Brief Description:** Regarding irrigation district boards of joint control.

**Sponsors:** By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Hinkle, Linville, Schoesler, Boldt and Mielke).

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 1/28/03, 3/5/03 [DPS].

**Floor Activity:**

Passed House: 3/12/03, 95-0.

Senate Amended.

Passed Senate: 4/14/03, 48-0.

### Brief Summary of Substitute Bill

- Allows certain private and public entities to establish or join a board of joint control with an irrigation district or an operating entity for a federal reclamation project.
- Specifies private entities must be allocated less than 50 percent of the votes on a board of joint control.
- Amends definitions in board of joint control statutes.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, Eickmeyer, Grant, Hunt, McDermott, Orcutt, Quall and Sump.

**Staff:** Caroleen Dineen (786-7156).

**Background:**

An irrigation district may be created to provide a system of water distribution for irrigation purposes. In addition, an irrigation district has authority to buy and sell electric power for irrigation and domestic use, operate a domestic water system for irrigated land owners, and operate a drainage or sewage system.

Two or more irrigation entities may create a board of joint control. An "irrigation entity" is defined for purposes of the board of joint control statutes as an irrigation district or an operating entity for a division within a federal reclamation project. A board of joint control may be created to:

- construct, operate, manage, and improve joint use facilities owned or controlled by participating irrigation entities; and
- conduct activities and programs promoting effective and efficient water management for member entities' benefit.

Among other powers, a board of joint control may acquire property or property rights within its area of jurisdiction by eminent domain in the same manner as irrigation districts. A board of joint control also may construct and operate drainage projects and water quality enhancement projects. In addition, a board of joint control may pursue conservation and system efficiency improvements and redistribute the saved water within its jurisdictional area or transfer it to others. Redistribution or transfer may not impair existing water rights outside the board of joint control's jurisdictional area. A board of joint control does not have authority to authorize changes in place of diversion or use or changes in purpose of use without the approval of the Department of Ecology and of the United States Bureau of Reclamation if within a federal reclamation area.

Washington courts have considered challenges to legislative grants of authority to perform some regulatory, disciplinary, or other functions to certain private associations or entities. In those cases, Washington courts have considered whether an unlawful delegation of legislative authority has occurred by examining factors such as whether the Legislature has provided standards or guidelines for delegated entities' action and included procedural safeguards to control arbitrary action or abuse of discretion.

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### **Summary of Substitute Bill:**

For purposes of the joint board of control statutes, the definition of "irrigation entity" is amended to include the following private or public entities:

- water company;
- water users' association;
- municipality;
- water right owner and user of irrigation water; or

- any other entity providing irrigation water as a primary purpose.

These entities are included within the definition when creating or joining a board of joint control with an irrigation district or operating entity for a division within a federal reclamation project.

When a board of joint control includes irrigation entities other than an irrigation district or operating entity for a division within a federal reclamation project, the voting structure must be established so that the votes apportioned to these other entities are less than 50 percent of the total votes.

A board of joint control must notify the Department of Ecology of transfers of water between the individual entities of the board of joint control that are not related to conservation and system efficiency improvements.

The definition of "joint use facilities" is amended to include ditches and natural streams in which the irrigation entity has rights of conveyance. The definition of "source of water" is amended to include tributary systems.

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#### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment specifies any change in place of use from a transfer of water between individual entities of a board of joint control must not reduce the total water supply available in a federal reclamation project and requires the board to consult with the federal Bureau of Reclamation when determining whether such a reduction may occur. Regarding the requirement to provide notice to the Department of Ecology for water transfers between individual entities of the board, the Senate amendment removes the limitation to transfers not related to conservation and system efficiency improvements, adds notice to any Indian tribe requesting notice, and applies this requirement only to boards of joint control created after January 1, 2003.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** The board of joint control statutes were enacted in 1949 and substantially revised in 1996. The 1996 revisions changed the definition of "irrigation entity" in a way that addressed the unique needs of the two irrigation districts (Roza and Sunnyside) forming a board of joint control at that time. The definition does not allow private water distribution companies to become partners in boards of joint control.

Joint boards of control allow partnerships to address major environmental issues. This bill will allow these private entities to access the types of grants and loans available to private entities. Amendments to the bill can address concerns about control of the board by the public entity members.

**Testimony Against:** None.

(Concerns) Concerns exist regarding the protection of senior water rights within the jurisdictional boundaries of a board of joint control. A board of joint control can redistribute water saved within its jurisdiction without making a determination regarding impairment of existing rights.

**Testified:** (In support) Mike Schwisow, Washington State Water Resources Association.

(With concerns) Dawn Vyvyan, Yakama Nation.