

SENATE BILL REPORT

ESHB 1317

As Reported By Senate Committee On:
Natural Resources, Energy & Water, April 4, 2003

Title: An act relating to the trust water rights program.

Brief Description: Enhancing the effectiveness of the trust water rights program.

Sponsors: House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Linville, Kirby, Grant, Quall, Shabro, Jarrett, Rockefeller, Hunt, Delvin, Morris and Conway; by request of Governor Locke).

Brief History:

Committee Activity: Natural Resources, Energy & Water: 3/28/03, 4/4/03 [DPA, DNPA].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: Do pass as amended.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Doumit, Fraser, Hale, Hargrove, Oke and Regala.

Minority Report: Do not pass as amended.

Signed by Senator Honeyford.

Staff: Sam Thompson (786-7413)

Background: The state has established two trust water rights programs managed by the Department of Ecology (DOE), one 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, irrigation, municipal, or other beneficial uses. The state may also use trust water rights to alleviate critical water supply problems.

The state can acquire trust water rights on a permanent or a temporary basis by purchase, gift, or other means, excluding condemnation. The state may acquire trust water rights as part of public funding of conservation measures. Transfers of water rights to the trust water right programs are exempt from the approval process otherwise required for changes or transfers of water rights, but are subject to similar approval processes.

It has been suggested that existing procedures for establishing trust water rights are unnecessarily complex and difficult to administer.

Summary of Amended Bill: The two state trust water rights programs, one applying to the Yakima River Basin, the other applying to the rest of the state, are consolidated. (Provisions concerning the Yakima River Basin are repealed and other provisions are revised and recodified.) Procedures for placing water rights in the consolidated trust water rights program

and for determining the quantity of water transferred to the program are clarified and simplified.

Trust water rights can be established for all types of water rights, including from water right claims and ground water rights. An unperfected water right in good standing may be placed in trust.

Water right change or transfer provisions do not apply to trust water rights established on a temporary basis unless the rights are transferred to another person. Acceptance of an existing water right as a temporary trust water right does not constitute a determination of the validity and extent of the right.

Prior to expending state or federal funds to acquire a trust water right, DOE must exercise appropriate due diligence to ensure the validity of the water right.

Amended Bill Compared to Substitute Bill: The amendment consolidates the two state trust water rights programs and clarifies that water rights temporarily transferred to the programs are not subject to water right change or transfer provisions.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (original bill) This bill provides some reassurance to water right holders who have been reluctant to temporarily place water rights into the program; it clarifies that water right extent and validity testing is not required in that circumstance.

Testimony Against: (original bill) (concerns) The bill may inadvertently limit DOE authority to establish temporary trust water rights. The bill's water right impairment provisions may confuse existing law.

Testified: Rep. Linville, prime sponsor (pro); Jim Waldo, Governor's Water Advisor (comments); Kathleen Collins, Washington Water Policy Alliance (neutral); Dawn Vyvyan, Yakama Nation (concerns).