

SENATE BILL REPORT

SB 5025

As Reported By Senate Committee On:
Natural Resources, Energy & Water, February 6, 2003

Title: An act relating to water right relinquishment.

Brief Description: Concerning the relinquishment of water rights.

Sponsors: Senators Honeyford, Mulliken and Hale.

Brief History:

Committee Activity: Natural Resources, Energy & Water: 1/21/03, 2/6/03 [DPS-WM, DNPS].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 5025 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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

Minority Report: Do not pass.

Signed by Senators Fraser and Regala.

Staff: Evan Sheffels (786-7486)

Background: The holder of a water right may lose the right by common law abandonment or by statutory forfeiture or relinquishment. Under the common law theory, abandonment is the intentional relinquishment of a water right. Intent to abandon is determined with reference to the conduct of the water right holder. Under common law, non-use is evidence of intent to abandon. A long period of non-use shifts the burden to the water right holder to explain the non-use.

Under the forfeiture statutes, a person who abandons or voluntarily fails without sufficient cause to use the water continuously, beneficially, and according to the limits of the recorded right for a period exceeding five successive years relinquishes the right or any unused portion of the right. Relinquished water reverts to the state and becomes available for subsequent appropriation. Intent to abandon is not required for statutory forfeiture.

Sufficient cause can excuse non-use and provide a defense against forfeiture in statutorily defined situations. The holder claiming a defense against statutory forfeiture has the burden to prove sufficient cause for non-use exists. Reasons for non-use that qualify as sufficient cause include

non-use that occurs as a result of drought or other unavailability of water; active military service during a time of crisis; non-voluntary military service; legal proceedings causing non-use; reductions related to federal laws or land program enrollments; state or federal agency

leases, purchases, or options to purchase lands or water rights that preclude or reduce the owner's use of the water right; certain weather-related irrigation reductions (so long as the diversion and delivery system is maintained); certain irrigation reductions related to electricity supply purposes; Yakima River enhancement project conservation purposes; certain irrigation return flows; and irrigation reductions due to crop rotation so long as the remaining water is beneficially used.

The statute also exempts particular categories of water rights from statutory forfeiture, including

certain rights related to power development; reserve or standby supply for drought relief (so long as the diversion and delivery system is maintained); certain future developments so long as plans are or were implemented with sufficient diligence; municipal water supply purposes; waters not subject to appropriation; rights or portions of rights leased to another person for use on another's land, if approved by the Department of Ecology; agricultural industrial process purposes; and trust water right purposes.

Summary of Substitute Bill: As of the effective date of the bill, the Department of Ecology's authority to issue orders of reversion under the forfeiture statutes is removed.

Substitute Bill Compared to Original Bill: The original bill generally repealed code provisions allowing the Department of Ecology to issue orders of reversion for water rights Ecology declared to be relinquished under the water rights forfeiture statutes. The substitute bill removes Ecology's reversionary or forfeiture authority as of the effective date of the bill. Orders of reversion issued by Ecology prior to the bill's effective date are not affected.

Appropriation: None.

Fiscal Note: Requested on January 13, 2003.

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

Testimony For: Agricultural-based economy is important to Washington and it needs predictable water supplies to be healthy. The failure to utilize the water abundantly available to us is costly in economic terms. Water is a key engine that drives the Washington economy. Relinquishment is the biggest problem in respect to water for agriculture. It is not the code that is broken. The administration of the code by the Department of Ecology is broken. The department uses every opportunity, including the trust water program, to "tune up" or reduce the quantity of a water right.

Testimony Against: The "use it or lose it" doctrine is done away with without any regard to consequences to water resources. This would result in depletion of stream flows and aquifers, and be detrimental to fish resources. The bill will make it harder for junior water rights to use water now allocated on paper to senior water right holders. The state's chance to provide a sustainable supply of clean water is eroded. Trust water rights should not be used to give validity to invalid rights. Many would be affected by the repeal of statutory relinquishment. Be careful. Unintended negative consequences to other users and in-stream flows are a real possibility. A strong beneficial use component is necessary for responsible water management. The bill would eliminate accountability and set back watershed planning.

Testified: PRO: Jim Halstrom, WA State Horticultural Assn.; Tom Myrum, WA State Water Resources Assn.; Chris Cheney, Dairy Federation, WA Cattlemen's Assn; WA Fryer Commission; Darryll Olsen, Columbia-Snake River Irrigation; Toni McKinley, WA State Grange; Hertha Lund, WA Farm Bureau; Scott Hazlegrove, WA Assn. of Sewer and Water Districts; Mike Kaysen, Fryer Commission; CON: Richard Reich, Steve Wehrly, Muckelshoot Tribe; Nancy Rust, Mike Moran, CELP; Dawn Vyvyan, Yakama Nation; Kevin Lyon, NW Indian Fisheries Commission; Jim Waldo, Governor's Office; Josh Baldi, WA Enviro Council; Denise Smith, LUV Washington.