

SENATE BILL REPORT

SB 5106

As Reported By Senate Committee On:
Natural Resources, Energy & Water, February 13, 2003

Title: An act relating to water rights.

Brief Description: Concerning the annual consumptive quantity of a water right.

Sponsors: Senators Hewitt, Hale, T. Sheldon, Doumit, Sheahan, Rasmussen, Morton, Mulliken, Honeyford, Deccio and Parlette.

Brief History:

Committee Activity: Natural Resources, Energy & Water: 1/21/03, 2/13/03 [DPS, DNP].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 5106 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senators Fraser and Regala.

Staff: Evan Sheffels (786-7486)

Background: Under the state water code, the Department of Ecology (DOE) may permit certain changes to a water right. DOE may also permit a transfer of a water right from one holder to another. In processing change or transfer applications, DOE analyzes the validity, limits, and quantity of the right. Changes or transfers cannot impair existing rights of other water right holders. A change to enable irrigation of additional acreage or the addition of new uses may be permitted if there is no increase in annual water consumption (amount diverted less return flow).

The annual consumptive quantity of water available to be changed or transferred is currently determined by calculating the average of the two years of greatest water consumption within the past five years of continuous beneficial use. The resulting figure is deemed the amount of water actually available to be changed or transferred.

The current water right forfeiture statutes provide for the relinquishment of a water right for the failure, without sufficient cause, to beneficially use water for five or more consecutive years.

Summary of Substitute Bill: The annual consumptive quantity of water available to change or transfer is amended so that water right holders will be credited with the difference between their peak historic use of water and current consumption so long as the following conditions are met: reductions in consumption must result from changes in system efficiencies or

cropping patterns, and the water right holder must intend and have the facilities in place to beneficially exercise the full right. Language defining the annual consumptive quantity available to change or transfer as the average of the two greatest years of use within the most recent five-year period is eliminated.

Application to DOE or any other governmental entity is not required when a water use is changed from one beneficial use to another beneficial use within the general category of agricultural use as defined in the bill.

As of the effective date of the bill, the statutory authority to determine that a water right has been relinquished under the water right forfeiture statutes is removed. Water right forfeiture orders of reversion issued by Ecology prior to the bill's effective date are not affected.

Substitute Bill Compared to Original Bill: The condition requiring the "ability" to make beneficial use of a full water right is amended to require a water right holder to have the "facilities in place" to make beneficial use of the full right. Language allowing changes within the agricultural use category without application is added. Language removing statutory forfeiture authority is added.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Washington has the second most water of any state, second only to Alaska. Everyone needs to eat and water is necessary to raise that food. This bill would address some interpretive problems related to relinquishment. It would help ensure that water rights are eventually transferred to higher economic activities by removing some of the disincentive to transfer agricultural water. Failure to utilize water efficiently has a huge economic detriment to Washington State. This is one positive step forward. We currently have no idea how a conservancy board or DOE will rule. Now everyone with any right knows to pump every drop they can.

Testimony Against: In effect, the bill prohibits relinquishment of water rights for agricultural irrigation. We need to encourage efficiency in water use while keeping the agricultural economy healthy. This issue needs further debate. If water is to be treated like any other property, it should be taxed. Do not expand the ability to use water rights, allowing more to be taken out of rivers and aquifers, without regard to environmental impacts. This bill would hydrate old paper rights. We need to wring paper out of the system so we know where we are. Under the first in time, first in right doctrine, because tribes were here first, adequate in-stream flows for tribal purposes must come first. We need to ensure sustainable rights to protect flows.

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; Hertha Lund, WA Farm Bureau; Kathleen Collins, WA Water Policy Alliance; 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; Josh Baldi, WA Enviro Council; Denise Smith, LUV Washington.