

SENATE BILL REPORT

SB 6662

As Reported By Senate Committee On:
Natural Resources, Energy & Water, February 6, 2004

Title: An act relating to providing certainty and clarity in the administration of water rights.

Brief Description: Concerning the administration of water rights.

Sponsors: Senators Morton, Honeyford and Mulliken.

Brief History:

Committee Activity: Natural Resources, Energy & Water: 2/4/04, 2/6/04 [DPS-WM, DNP].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 6662 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: Certain aspects of a water right may be modified with the approval of the Department of Ecology (DOE) if the modification would not impair other existing water rights. Such an approved modification does not affect the priority date of the right. Alterations in water rights are referred to in statute as transfers, changes, and amendments.

Forfeiture statutes provide for water right relinquishment when a person, for five or more consecutive years, abandons or voluntarily fails without sufficient cause to beneficially use water in accordance with the recorded right's terms. Relinquished water reverts to the state. Intent to abandon, or clear evidence of such intent, is required under the common law theory of abandonment. Intent to abandon is not required under Washington's forfeiture statutes.

Summary of Substitute Bill: A general agricultural use category is created. Within this category, water right changes regarding type of crop or agricultural use not involving a change in season of use are allowed without applying for approval.

Within the agricultural use category, changes in the season of use are allowed if DOE does not raise potential impairment concerns within 30 days of receiving written notice from the applicant. DOE can request a 15-day extension. Proposed changes from a seasonal period that is more critical for other water rights and stream flows to a period that is less critical are granted a rebuttable presumption of nonimpairment.

A nonappealable DOE determination of potential impairment precludes further proceeding under the agriculture use change provisions, though a water right holder may then apply for approval in accordance with other water right change provisions. DOE's earlier determination of potential impairment may not result in any presumption of impairment in subsequent applications.

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: For changes from one agricultural use to another that involve a change in season, Ecology is given 30 days, instead of 20 days in the original bill, to review a proposed change and notify an applicant that a proposed change raises concerns of potential impairment.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The first part of this bill provides needed water flexibility for the agricultural community. This language is from the Joint Executive Legislative Water Policy Group. I like the ag-2-ag part, but why is the "change in the type of crop irrigated" language in the bill? Farmers do not need permission to change crops now. Farmers need to change crops all the time. CONCERN: Ecology suggests a little longer, say 30 days instead of 20, to review change in season requests for potential impairment. While we appreciate the relinquishment problem, we think the Governor's confirmation bill is a better approach.

Testimony Against: Relinquishment policy is a basic tenet of western water law to prevent speculation and hoarding of water. We are worried that the ag-2-ag provisions will revive or rewet dead and dry paper rights that should be relinquished. Tribes have grave concerns about the effect of this bill on junior and senior water rights and stream flows. An ag-2-ag change may result in more consumptive use and not be subject to review.

Testified: Dawn Vyvyan, Yakama Nation (con); Josh Baldi, WA Enviro Council (con); Britt Dudeck, WA Farm Bureau (concerns); Tim Boyd, Columbia-Snake River Irrigators (pro).