

HOUSE BILL REPORT

HB 1297

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to extending the time period permitted to put water to beneficial use.

Brief Description: Concerning the relinquishment of a water right.

Sponsors: Representatives Chandler, Blake, Warnick, Schmick, Hinkle, Armstrong, Klippert, Haler, Walsh, Nealey, Fagan, Condotta, Kretz, Taylor, Short, Johnson, McCune and Harris.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/25/11, 2/1/11, 1/20/12, 1/31/12 [DP].

Brief Summary of Bill

- Extends the time permitted to put water to beneficial use from five to 15 years for the purposes of relinquishment.
- Modifies the definition of "annual consumptive quantity" for the purposes of determining a water right change.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass. Signed by 8 members: Representatives Blake, Chair; Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Hinkle, Kretz, Orcutt and Van De Wege.

Minority Report: Do not pass. Signed by 4 members: Representatives Dunshee, Finn, Lytton and Pettigrew.

Staff: Jason Callahan (786-7117).

Background:

State law permits water rights or portions of water rights to be changed to other uses or places if the change can be made without detriment or injury to existing rights.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Annual Consumptive Quantity.

A change in the place of use, point of diversion, or purpose of use of a water right to allow the irrigation of additional acreage or the addition of new uses may be permitted if the change results in no increase in the annual consumptive quantity of water used under the water right. The "annual consumptive quantity" is the estimated or actual annual amount of water diverted under the water right as that amount is reduced by the estimated annual amount of return flows, averaged over the most recent five-year period of continuous beneficial use of the water right.

Relinquishment.

Water rights may be relinquished when a person, for five or more consecutive years, abandons or voluntarily fails without sufficient cause to beneficially use water in accordance with their recorded right's terms. The water code provides a list of "sufficient causes" for voluntary non-use that protect a water right from relinquishment.

Summary of Bill:

Annual Consumptive Quantity.

The definition of "annual consumptive quantity" is modified. "Annual consumptive quantity" means the estimated or actual amount of water diverted pursuant to the water right during the peak year of water use within the most recent 15-year period of beneficial use, reduced by the estimated annual amount of return flows.

Relinquishment.

For the purposes of water rights registration and relinquishment, "beneficial use" means or refers to the peak year of water use during the most recent 15-year period. If a portion of a water right is not beneficially used for 15 consecutive years (instead of five) without sufficient cause recognized by statute, the right or unused portion of the right is relinquished.

Application.

The bill applies to all administrative matters that were commenced or pending on the effective date of the bill. The bill also applies to any judicial action in which no final non-appealable judicial order has been entered prior to the effective date of the bill.

The bill does not apply if a senior water right holder objects to the application of the bill to a matter, and it is determined that the objecting party holds an existing water right that would be impaired by the application of the bill to the matter. In such cases, the law as it existed prior to the effective date of the bill applies.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 2, relating to the definition of annual consumptive quantity, and section 7, relating to sufficient cause to delay relinquishment which reinstates prior law after a scheduled expiration, which take effect June 30, 2019.

Staff Summary of Public Testimony:

(In support) The current five-year window for considering relinquishment is insufficient to account for unpredictable conditions in weather, crops, and the agricultural economy. A 15-year time period is more equitable and more reflective of actual conditions. A longer time window would also be more efficient for the Department of Ecology (Department) while not compromising the integrity of the relinquishment policy.

(With concerns) A change to a 15-year relinquishment time period would require the Department to look at water use for any user back to the 1960s to see if there was ever a period of 15 years without the full, beneficial use of a water right. This creates potential legal retroactivity questions due to the time periods involved and complications in the adjudication process for select basins. The current bright line standard is sufficient when coupled with the more than 20 exemptions from relinquishment.

(Opposed) The relinquishment doctrine is the foundation for Washington water law and ensures that water is used for its highest and best purposes. A 15-year relinquishment time period would undermine the goals of relinquishment and lead to water non-use and the avoidance of water use scrutiny. The 15-year relinquishment time period would mean less water is relinquished and made available for reappropriation and for the enhancement of in-stream flows.

Persons Testifying: (In support) Representative Chandler, prime sponsor.

(With concerns) Evan Sheffels, Department of Ecology.

(Opposed) Bruce Wishart, Center for Environmental Law and Policy and the Sierra Club; and Steve Robinson, Tulalip and Umatilla Tribes.

Persons Signed In To Testify But Not Testifying: None.