

# SENATE BILL REPORT

## SB 6152

---

---

As Reported by Senate Committee On:  
Agriculture, Water & Rural Economic Development, February 2, 2012

**Title:** An act relating to streamlining water right permitting and appeals.

**Brief Description:** Streamlining water right permitting and appeals.

**Sponsors:** Senators Hatfield and Honeyford.

**Brief History:**

**Committee Activity:** Agriculture, Water & Rural Economic Development: 1/19/12, 1/23/12, 2/02/12 [DPS].

---

### SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

**Majority Report:** That Substitute Senate Bill No. 6152 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hatfield, Chair; Shin, Vice Chair; Honeyford, Ranking Minority Member; Becker, Delvin, Haugen, Hobbs and Schoesler.

**Staff:** Diane Smith (786-7410)

**Background:** The Water Code requires construction work to begin within a reasonable time after a permit has been granted as prescribed by the Department of Ecology (DOE), be prosecuted with diligence and completed within the time prescribed by DOE. Upon a showing of good cause, DOE must extend these times for as long as is reasonably necessary. Examples of good cause are provided in the Water Code.

There are currently 20 water conservancy boards operating in Washington, four of which are in western Washington. Where a county or counties have created a water conservancy board, the board is authorized to process the same kinds of transfer applications as does DOE with a few exceptions. Transfer is defined by statute to mean transfer, change, amendment, or other authorized alteration of a water right. Boards do not have jurisdiction of new water rights. Approval or denial of a water right transfer application is determined by the majority vote of a board.

---

*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.*

A board's decision is subject to DOE approval. The director of DOE must review the board's decision for compliance with applicable state water law. The director may affirm, reverse, or modify the board's decision within 45 days with a 30-day extension allowed. If the director fails to act within these timelines, the board's record of decision becomes the decision of DOE.

**Summary of Bill (Recommended Substitute):** Any water right permit, previously approved permit extension, or water right change or transfer is eligible for a five-year, ministerial extension of time for construction work and for the application of the water to beneficial use. This extension must be issued by DOE after payment of the fee required by the schedule of fees in the Water Code. While under this extension, DOE may not change the quantity of water authorized by the permit or modify any other terms or conditions of the permit. The ministerial extension is an alternative to the existing good-cause extension.

Through December 31, 2016, the board may elect to issue a final decision if requested to do so by the applicant and if the applicant and the board agree in advance that the party defending the board's decision in case of appeal will be either the board; the applicant; or the board and applicant jointly. The boards' decisions are appealable as is any other decision under the Water Code and the regulation of public groundwaters statutes. The director has the same right to appeal as any other aggrieved person. If an appeal is made to the Pollution Control Hearings Board (PCHB), the water conservancy board may participate in the appeal at the water conservancy board's option.

Appeals of penalties of \$15,000 or less may be heard by an administrative law judge employed by the board.

**EFFECT OF CHANGES MADE BY AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT COMMITTEE (Recommended Substitute):** Clarifying changes are made to the board's option to issue a final decision. Qualifiers are placed on the board's authority to elect to make a final decision. The board may elect to issue a final decision if requested to do so by the applicant and if the applicant and the board agree in advance that the party defending the board's decision in case of appeal will be either the board; the applicant; or the board and applicant jointly.

**Appropriation:** None.

**Fiscal Note:** Requested on January 17, 2012.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Original Bill:** PRO: Permit extensions are the result of the economic slow-down and consequent project delay. Almost all time extensions are currently approved. The automatic five-year extension has minimal cost and process for the landowner, DOE, and PUDs. Making the boards' decisions final eliminates duplicative review. PCHB can assign these reviews to the Office of Administrative Hearings thus freeing up PCHB. DOE is in favor of the ministerial five-year extension with the five-year sunset.

This relieves DOE's limited water staff's backlog. Boards are trained by DOE with a 32-hour course and eight hours per year in continuing education. Questions can be resolved in court, if necessary.

CON: Water decisions are legally and technically complex. Boards are volunteers and need oversight. In a number of instances, DOE has made corrections.

OTHER: DOE is a gap-stop for the boards' change and transfer decisions. There are complicated decisions, and DOE's review adds value while reducing risk and costs of litigation. Since board members are volunteers, some may shy away from serving.

**Persons Testifying:** PRO: Bill Clarke, WA PUD Assn.; Courtney Barnes, Assn. of WA Business; John Stuhlmiller, Farm Bureau; Scott Hazelgrove, WA Assn. of Sewer and Water Districts.

CON: Bruce Wishart, Center for Environmental Law and Policy and the Sierra Club.

OTHER: Maia Bellen, DOE.