

SENATE BILL REPORT

SB 5219

As of February 28, 2013

Title: An act relating to retaining water resources to assure the vitality of local economies.

Brief Description: Retaining water resources to assure the vitality of local economies.

Sponsors: Senators Honeyford, Hatfield, Smith, Schoesler, Delvin and Hewitt.

Brief History:

Committee Activity: Agriculture, Water & Rural Economic Development: 1/29/13, 2/19/13
[DPS-WM].

Ways & Means: 2/26/13.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5219 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hatfield, Chair; Honeyford, Ranking Member; Brown, Hobbs, Schoesler and Shin.

Staff: Bob Lee (786-7404)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Sherry McNamara (786-7402)

Background: In an effort to retain water to support local economies, Chapter 112, Laws of 2011 (ESSB 5555) requires electronic notification to the board of county commissioners of any proposed water right transfer from one basin to another that occurs east of the crest of the Cascade Mountains.

In 1967, the water right relinquishment law was enacted. Under this law, if all or a portion of a water right is unused for a period of five consecutive years, the unused portion reverts to the state.

Under the Trust Water Right statutes enacted in 1989 and 1991, a mechanism was established to allow water rights to be placed into a trust while holding their original date of priority.

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.

Then these water rights can be designated for another specified use as long as the new use does not impair existing water rights.

There are 62 watersheds in the state, established in rule, that are referred to as water resource inventory areas (WRIAs).

The Department of Ecology (Ecology) processes applications for new water rights based upon the date the application was filed.

Summary of Bill (Recommended Substitute): The Department of Fish and Wildlife, the Parks and Recreation Commission, and the Department of Natural Resources (DNR) must each maintain an inventory of water rights appurtenant to the lands purchased by their agencies. At least once each year, the agency must review and record whether all or a portion of the water right for each of these lands has been used. If the agency does not plan on continuing the use of all or a portion of the water right on the state-owned lands, or if all or a portion of a particular water right has been unused for four consecutive years, the agency must commence the process of transferring the unused portion to the local economy trust water account. Before the end of the fifth year of non-use, the transfer to the account must be completed and the water right must be temporarily held by the department until the water right is transferred to another beneficial use.

If the agency has started the process, but has subsequently placed the water right to beneficial use and plans to continue to fully use the water right in subsequent years, the agency must notify Ecology to terminate the transfer.

A water right that has been transferred to Ecology is to be made available for transfer to a new use within the same WRIA as the original use. Once Ecology receives a water right, it must provide notification to the next person in line who filed an application for a water right from that WRIA. If that person is interested in a transfer from the local economy trust water account, the applicant must respond to Ecology within 30 days and must agree to pay the costs associated with completing the transfer. If no response is received within 30 days, Ecology must notify the next applicant in line.

These requirements do not apply to properties with deed restrictions in conflict with the provisions of the act, or if it would otherwise violate the law.

Ecology may approve the transfer from the local economy trust water account to a new use if the request is reviewed and approved under the water right transfer statutes. Ecology may not authorize the new use if it causes detriment or injury to existing rights.

If approved, documentation must be provided. Decisions are appealable to the Pollution Control Hearings Board or to a superior court conducting a general water right adjudication.

Notice of application for transfer of a water right, as required under the water right transfer statutes, applies. Ecology must provide electronic notice and opportunity to comment to affected local governments and affected tribal governments before initiating the use of the local economy trust water account the first time in a WRIA.

The water right relinquishment laws do not apply during the period that the water right is held in the local economy trust water account, nor during the construction period granted in the approved water right transfer document.

EFFECT OF CHANGES MADE BY AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT COMMITTEE (Recommended Substitute): The following changes were made in the substitute bill:

- provides that non-consumptive water rights used by fish hatcheries and associated rearing ponds, and water rights associated with permit-exempt wells do not need to be tracked for possible relinquishment;
- clarifies that the bill applies only to lands purchased by state agencies and does not apply to state trust lands nor to state forest board lands as defined in other statutes;
- clarifies that certain exemptions to relinquishment of water rights also apply to non-use by state agencies but would not be exempt from other provisions that would nullify the intent of the bill;
- adds that applicants that would receive notice of water availability would be located in the area of suitability consistent with water right transfer statutes;
- clarifies that water rights would not be lost by statutory relinquishment for non-use while waiting for final determination from Ecology on processing a water transfer application, or during the construction or development schedule for placing the water to beneficial use; and
- requires Ecology to report to the appropriate legislative committees and to the legislators for the affected area the reason for failure if Ecology has failed to approve a water right transfer within three years.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: None.

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

Staff Summary of Public Testimony on Original Bill (Agriculture, Water & Rural Economic Development): PRO: There is concern about drying up northeastern Washington along with the water needed by their local economy. The bill aims to keep the same water previously used by local communities available to support their economy. It is getting more difficult to get new water permits. This is a mechanism to keep water used by local economies in play. There is concern that the state currently receives special treatment over private citizens.

CON: Funding is not provided to conduct the reviews by state agencies called for in this bill. There are concerns that instream flows may be impacted. There is a concern about setting up a new trust statute. The bill would allow relinquished water rights to be used for consumptive uses rather than adding to instream flows.

OTHER: DNR wants clarification to assure that they have flexibility to continue to use water on trust lands. There are issues of costs to the agencies.

Persons Testifying (Agriculture, Water & Rural Economic Development): PRO: Senator Honeyford, prime sponsor; John Stuhlmiller, WA Farm Bureau; Jack Field, WA Cattlemen's Assn.

CON: Bruce Wishart, Center for Environmental Law and Policy (CELP), Sierra Club; Darcy Nonemacher, WA Environmental Council; Dawn Vyvyan, Yakama Nation.

OTHER: Evan Sheffels, Ecology; Kyle Blum, DNR.

Staff Summary of Public Testimony (Ways & Means): PRO: There are concerns about Department of Fish and Wildlife and other state agencies buying up a lot of land and the water rights that go with that land, particularly in northeastern Washington. The local economies are drying up; they no longer have income from the water or the land. This bill will keep water in the area and in production, so that we can keep the local economies going.

CON: There is support for one of the main objectives of this bill and that is the provision that requires the state agencies to regularly review water usage on state-owned property and to ensure that the water is being put to a beneficial use. There are concerns about ongoing costs with this bill. In addition, current law provides a mechanism to address this issue under the State Water Rights Trust. Under this trust unused water can be put back into the stream for use. This trust is preferred to the clouding use of the new trust established in this bill.

Persons Testifying (Ways & Means): PRO: Senator Honeyford, prime sponsor.

CON: Bruce Wishart, CELP, Sierra Club.