

HOUSE BILL REPORT

HB 1000

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to water rights appurtenant to land managed by the department of fish and wildlife.

Brief Description: Concerning water rights appurtenant to land managed by the department of fish and wildlife.

Sponsors: Representatives Blake, Kretz and Buys.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/14/15, 2/10/15 [DPS].

Brief Summary of Substitute Bill

- Provides the option for the Washington Department of Fish and Wildlife (WDFW) to lease water rights which are appurtenant to parcels of land that are owned or managed by the WDFW for beneficial use and use the revenue for projects related to hatcheries, endangered species, land management, and salmon recovery.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Blake, Chair; Buys, Ranking Minority Member; Dunshee, Hurst, Lytton, Orcutt and Van De Wege.

Minority Report: Do not pass. Signed by 5 members: Representatives Dent, Assistant Ranking Minority Member; Chandler, Kretz, Schmick and Stanford.

Minority Report: Without recommendation. Signed by 1 member: Representative Pettigrew.

Staff: Jason Callahan (786-7117).

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.

Background:

State Land Management.

The management of land owned in the name of the state has been delegated to a number of state agencies and universities. The management philosophy of the land is generally determined by the jurisdiction, authorities, and priorities of the agency delegated the management responsibilities. The State Parks and Recreation Commission, the Department of Natural Resources, and the Washington Department of Fish and Wildlife (WDFW) are three agencies that manage many acres of developed and undeveloped public lands in the state.

The WDFW primarily manages land for hunting and fishing access and habitat conservation. The predecessor of the WDFW acquired its first land parcel in 1939; an 80-acre parcel in Okanogan County acquired for mule deer habitat. Today, the WDFW manages over 800,000 acres and more than 600 water-access sites.

Water Rights Relinquishment.

A landowner who has the right to use water will lose that right if he or she does not put the water to a beneficial use over a period of five consecutive years. This is commonly known as both "relinquishment" and the "use it or lose it" principle. The water right holder can lose, or relinquish, their entire right to use any water or a portion of their original water right depending on how much water was not put to beneficial use over the five years in question.

There are, however, instances when a water right holder cannot use the water for five years and still retain his or her rights to the water. This occurs when the water right holder can show a sufficient cause for not using the water. The qualifying sufficient causes have been identified in statute and include causes such as drought, military service, legal proceedings, and crop rotation practices. Water right holders that can show a sufficient cause do not relinquish their right to water even if they go more than five years without putting the water to a beneficial use.

State Trust Water Rights Program.

The State Trust Water Rights Program allows a permanent donation of a water right, or a temporary donation that allows the water right holder to maintain his or her water rights for future uses without the water right relinquishing. Water enrolled in the program is held by the Department of Ecology and put to beneficial uses. Water enrolled in the State Trust Water Rights Program is held in trust and retains its original priority date.

Summary of Substitute Bill:

The Habitat Enhancement and Leasing Account (HEAL Account) is created as an appropriated account to be managed by the WDFW. Money in the HEAL Account must be used by the WDFW to either fund regional fisheries enhancement groups, pay for production

at WDFW-owned fish hatcheries, or to control weeds and other invasive plants on WDFW-owned lands.

Revenue from the HEAL Account is generated through the leasing of water rights that are appurtenant to parcels of land that are owned or managed by the WDFW. The water rights eligible for leasing are identified through the creation and annual updating of an inventory of all water rights associated with WDFW-managed land. The inventory must contain information regarding whether the water right has been used in the previous four years for out-of-stream or in-stream beneficial use or if the WDFW plans to use the water right for out-of-stream or in-stream beneficial use in the coming four years.

Unless subject to a sufficient cause exemption to the state's water right relinquishment policy, all water rights identified by the inventory as not being subject to recent or near-future out-of-stream or in-stream beneficial use must be offered for leasing in the same watershed and at comparable market terms. Leasing revenues are dedicated to the HEAL Account. Leases for in-stream use may be enrolled in the State Trust Water Rights Program to be used for the basis of mitigation credits.

The leasing requirement does not apply to non-consumptive water rights used by fish hatcheries or to properties with deed restrictions that conflict with water rights leasing. It also does not apply to donations of water rights by the WDFW to the State Trust Water Rights Program. The WDFW must report annually to the Legislature the number and location of water rights in its ownership, the number of water rights that were purchased or otherwise acquired in the previous year, and the current use and leasing status of all water rights in its ownership.

Substitute Bill Compared to Original Bill:

The substitute bill requires the WDFW to inventory in-stream uses in addition to out-of-stream uses, allows the WDFW to lease water rights for in-stream uses, limits the use of a leased water right to the original watershed, removes the ability of the WDFW to use funds in the HEAL Account to purchase land, allows the WDFW to choose donations to the State Trust Water Rights Program over for-profit leasing, and requires annual reporting on the number and use of water rights owned by the WDFW.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The WDFW has seen its budget reduced significantly over the past few biennia and needs to have tools available to access the money that is available in the land that the

agency manages. It is important that the state knows that water rights it holds and the status of those rights so that it does not inadvertently relinquish those water rights and lose a portion of the value that the public paid on the land.

There are very few ways to find new water for a water bank, and this may be one of them. Using water rights held by the WDFW may be a way to offset the use of permit-exempt wells for stock watering and domestic use. Land purchased by the WDFW through the Recreation and Conservation Office (RCO) may have deed restrictions that makes water leasing difficult, so that policy of the RCO may need to be revisited.

(With concerns) The WDFW only has a partial inventory of the water rights associated with the land it manages and would need assistance in the budget to verify and track water usage. Even then, it may be that much of this water has already been relinquished. If not relinquished, using this water for out-of-stream uses may have a negative impact on in-stream flows and habitat objectives. Since most land managed by the WDFW is former agricultural land, the WDFW should be required to prioritize water right leasing for agricultural uses as a way to support agricultural growth. There should also be a priority for using water in the county where the WDFW land is located. Revenue generated by leasing state water should not be used for more land acquisition. Many counties already have large public land ownerships and do not support more land and water being taken out of private ownership.

(Opposed) The state needs to do a better job creating a proper inventory of water rights, and the uses of the revenue proposed in the bill are beneficial; however, the existing trust water rights program managed by the Department of Ecology should be used as a mechanism for allowing the state to keep the water for in-stream uses. The requirement that the water be used for out-of-stream uses limits in-stream options.

Persons Testifying: (In support) Representative Blake, prime sponsor; and Evan Sheffels, Washington Farm Bureau.

(With concerns) Clay Sprague, Washington Department of Fish and Wildlife; Trinity Stucker, Okanogan County Farm Bureau; and Jack Field, Washington Cattlemen's Association.

(Opposed) Bruce Wishart, Center for Environmental Law and Policy and Sierra Club; and Dawn Vyvyan, Yakima Nation and Puyallup Tribe.

Persons Signed In To Testify But Not Testifying: None.