

SENATE BILL REPORT

SB 5010

As Passed Senate, February 28, 2017

Title: An act relating to promoting water conservation by protecting certain water rights from relinquishment.

Brief Description: Promoting water conservation by protecting certain water rights from relinquishment.

Sponsors: Senator Warnick.

Brief History:

Committee Activity: Agriculture, Water, Trade & Economic Development: 1/12/17, 2/09/17 [DP, DNP].

Floor Activity:

Passed Senate: 2/28/17, 27-22.

Brief Summary of Bill

- Exempts a water right used for irrigation or agricultural purposes from relinquishment if the water right is not fully used due to water conservation or water use efficiency measures.

SENATE COMMITTEE ON AGRICULTURE, WATER, TRADE & ECONOMIC DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Warnick, Chair; Hawkins, Vice Chair; Brown, Honeyford, Pearson, Short and Takko.

Minority Report: Do not pass.

Signed by Senators Chase, Ranking Minority Member; Wellman, Assistant Ranking Minority Member; McCoy and Van De Wege.

Staff: Karen Epps (786-7424)

Background: Washington operates under a water right permit system. With certain exceptions, new rights to use surface or ground water or to establish reservoir and storage

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projects must be established according to the permit system. A person seeking a new water right files an application with the Department of Ecology (Ecology), which must consider a four-part test when deciding whether to issue the requested right: (1) whether water is available, (2) whether a beneficial use of water would be made, (3) whether granting the right would impair existing rights, and (4) whether the proposed use would detrimentally affect the public welfare. If an application passes this test, Ecology issues a permit which establishes a time table for constructing the infrastructure to access the water and for putting water to beneficial use. When the conditions of the permit are satisfied, Ecology issues a water right certificate.

Under the relinquishment statute, if a water right holder abandons or voluntarily fails to beneficially use all or any part of their water right for five successive years without sufficient cause, the right or portion unused reverts to the state. The relinquishment statute provides a list of sufficient causes for voluntary nonuse that protect a water right from relinquishment. Examples of sufficient causes include drought or unavailability of water, certain military service, the operation of legal proceedings, or when waiting for a final determination from Ecology on a change application. Water right holders that can show a sufficient cause do not relinquish their right to water even if it has been more than five years without that water being put to beneficial use. Additionally, the statute includes a list of exemptions under which there is no relinquishment. Examples of these exemptions include the use of water rights for power development, water rights used only in times of drought or low flow periods, municipal water supply for residential purposes, and water that is placed in the Trust Water Rights Program.

Summary of Bill: A water right is exempt from relinquishment if the water right is used for irrigation or agricultural purposes and is not exercised to the full extent of the right due to the implementation of water conservation or water use efficiency measures.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: It is important to encourage the conservation of water but the relinquishment statute sets up the "if you do not use it, you are going to lose it" issue. This bill is designed to start the discussion to allow farmers to use water efficiently without losing it. This bill confirms that when a water right holder does conservation activities that water is going to be there for them to use. This bill will go a long way toward incentivizing good conservation measures. This bill will save irrigators money and will encourage them to put good efficiencies in place and it will also put water into the streams in between the point of diversion and where the return flows come back to the stream.

CON: This bill would allow farmers to avoid relinquishment and they could claim that water was made available through conservation, but there is not a lot of clarity around how these determinations would be made. There is already a process for water to be put into trust that

looks carefully at how much has been conserved and whether there was a lapse in use. This bill expands the relinquishment statute and there is no way to ensure that conservation is actually achieved in this bill. Without safeguards, there is a possibility that those who are thought to be conserving are actually exceeding their use because they could now use more water without actually proving that they are conserving water. There are concerns that it might be wasteful to allow water right users to monopolize water when they are not actually using it.

OTHER: A new exemption is not needed. This bill would not help improve water management. The central concern is that this bill would reduce water available for new landowners. By holding water with existing water right holders, that water would not be freed up for other uses. There are already 22 exceptions to relinquishment in statute, including crop rotation, non-use due to drought and the trust water rights program.

Persons Testifying: PRO: Senator Warnick, Prime Sponsor; Mike Schwisow, WA State Water Resources Assoc.; Kathleen Collins, WA Water Policy Alliance; Evan Sheffels, WA Farm Bureau.

CON: Denise Smith, League of Women Voters of WA; Bruce Wishart, Sierra Club and CELP; Ann Tweedy, Muckleshoot Indian Tribe; Dawn Vyvyan, Yakama Nation and Puyallup Tribe.

OTHER: Dave Christensen, Department of Ecology.

Persons Signed In To Testify But Not Testifying: No one.