

HOUSE BILL REPORT

ESHB 1775

As Passed House:

March 9, 1995

Title: An act relating to water transfers and changes.

Brief Description: Specifying how water rights apply to conserved water and providing an appeal process for decisions regarding conserved water.

Sponsors: By House Committee on Agriculture & Ecology (originally sponsored by Representatives Mulliken, Mastin, Schoesler, Chandler, McMorris, Robertson, Honeyford and Elliot).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/15/95, 2/16/95, 2/27/95 [DPS].

Floor Activity:

Passed House: 3/9/95, 94-1.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Chandler, Chairman; Koster, Vice Chairman; McMorris, Vice Chairman; Mastin, Ranking Minority Member; Chappell, Assistant Ranking Minority Member; Boldt; Clements; Delvin; Honeyford; Johnson; Kremen; Poulsen; Regala; Robertson; Rust and Schoesler.

Minority Report: Do not pass. Signed by 1 member: Representative R. Fisher.

Staff: Kenneth Hirst (786-7105).

Background:

Transfers and Relinquishment. State law permits water rights or portions of water rights to be transferred to other uses or places if the transfer can be made without detriment or injury to existing rights. If the transfer involves surface water supplied by an irrigation district and the transferred water remains in the district, the transfer need be approved only by the irrigation district. Other transfers must be approved by the Department of Ecology. In consideration for the financial assistance the state provides for a water conservation project, the state may receive a portion of the net water savings as a trust water right. State statutes do not expressly provide for the

transfer of conserved water under other circumstances. Indeed, if a portion of a water right is not beneficially used for five consecutive years without sufficient cause recognized by statute, that portion of the right reverts to the state.

Groundwater Planning. The groundwater code permits the department to designate and manage groundwater areas, sub-areas, or depth zones to prevent the overdraft of groundwaters. In 1985, legislation was enacted that authorizes other groundwater management programs. The legislation permits local governments to be lead agencies in developing these programs.

Summary of Bill:

New rules are established for water made surplus to a water right through the implementation of practices or technologies that are more efficient or more water use efficient than those under which the right was perfected and for water made surplus through a change in the crops grown with the water. If the water is not supplied by an irrigation district, the person who holds the water right may use the water on other lands owned by the person that are contiguous to the lands upon which use of the water was authorized before this change in use. The person who holds the water right is to notify the Department of Ecology of the change. The notification provides a change in the person's water right and the department is to revise its records for the right accordingly.

If the water is supplied by an irrigation district, an individual water user does not have a right to such water made surplus through a change in the crops grown. However, the water made surplus through such crop changes may be used for the benefit of the district generally. The use of the water made surplus through the efficiency or water use efficiency practices or technologies is regulated solely by the irrigation district and must be approved or authorized by the district. If the use of such surplus water results in the total irrigated acreage within the district exceeding the irrigated acreage recorded with the department for the district's water right, the board is to notify the department of the change. The notification provides a change in the district's water right and the department is to revise its records for the right accordingly.

Whether the water is or is not supplied by an irrigation district, the priority date for the right to the use of the surplus water is the same as for the original water right.

Transfers. When an irrigation district is requested under current law to approve a transfer or change regarding water provided by the district or when it is requested to approve changes for surplus water, the district must consider the effect of the transfer or change on the financial and operational integrity of the district. The Department of Ecology may not initiate relinquishment proceedings regarding a water right for which an application for a transfer or change is filed for a period of two years after the

application is filed. The requirements for applications for new water rights do not apply to transfers of water rights.

Appropriation: None.

Fiscal Note: Available on original bill. Fiscal note on substitute bill requested on February 27, 1995.

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

Testimony For: (1) More incentives are needed to conserve water; the use it or lose it principle of water law is a disincentive if conserved water cannot be used to the benefit of the person who conserves it. (2) The bill protects acreage expansion rules in groundwater management plans. (3) The principles of the bill should apply to water saved because of the agricultural commodities grown, not just crops grown.

Testimony Against: (1) Instream flows should be considered when rights to water are transferred. (2) The new appeals process should be removed from the bill; the Pollution Control Hearings Board has improved its efficiency and has reduced its backlog of cases.

Testified: Representative Mulliken (prime sponsor); Jim Zimmerman, Trout Lodge, Inc. (pro); Mary Burke, (pro); Joe LaTourrette, Rivers Council of Washington (concerns); Judy Turpin, Washington Environmental Council (commented); and Bob Jensen, Environmental Hearings Office (opposed to appeals process).