

HOUSE BILL REPORT

HB 2199

As Reported By House Committee On:

Agriculture & Ecology
Appropriations

Title: An act relating to granting water rights.

Brief Description: Granting water rights to certain persons who were water users before January 1, 1993.

Sponsors: Representatives Chandler, Mastin, Schoesler, Sheldon, Hymes, Honeyford, Delvin, Robertson, Campbell, Johnson, Boldt, Linville, Goldsmith and McMahan.

Brief History:

Committee Activity:

Agriculture & Ecology: 1/9/96, 1/10/96, 1/11/96, 1/15/96 [DPS];
Appropriations: 1/30/96, 1/31/96 [DPS(AG)].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Chandler, Chairman; Koster, Vice Chairman; Chappell, Ranking Minority Member; Linville, Assistant Ranking Minority Member; Boldt; Clements; Delvin; Honeyford; Johnson; Mastin; Robertson and Schoesler.

Minority Report: Without recommendation. Signed by 5 members: Representatives R. Fisher; Murray; Ogden; Regala and Rust.

Staff: Kenneth Hirst (786-7105).

Background: With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water are established under a permit system. However, certain uses of groundwater not exceeding 5,000 gallons per day have been exempted from this permit requirement. The permit system is based on the prior appropriation doctrine that "first in time is first in right." Prior to these enactments, rights to water were obtained under a variety of water doctrines.

Summary of Substitute Bill: A person who placed surface or ground water to beneficial use for irrigation or stock watering purposes before January 1, 1993, for

which a permit or certificate was not issued by the Department of Ecology (DOE) or its predecessors, is granted a water right in the amount beneficially used. The right is granted if the person files with the DOE a statement of claim for the right during a filing period beginning September 1, 1996, and ending midnight, June 30, 1997; and the person files with the statement of claim certain specified evidence that the water described in the claim was used beneficially before January 1, 1993. Rights are not granted for the withdrawal of water in an area that is the subject of an ongoing general adjudication proceeding for water rights.

The priority date of the water right is the date a claim for the right is filed. Such a right may not affect or impair a right that existed before the opening of the claim filing period.

Substitute Bill Compared to Original Bill: Removed by the substitute bill is a provision prohibiting a person filing claims under the bill from possessing, prior to January 1, 1993, a water right permit or certificate for any water right. Added by the substitute bill are provisions to prohibit filings for claims to water in areas that are the subject of an ongoing general adjudication for water rights and to prohibit expressly rights claimed under the bill from affecting rights existing prior to the opening of the claim filing period.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (1) About one-third of the people using irrigation water in Whatcom County are doing so without a permit, and about two-thirds of them are using water in a manner other than as specified by their permits. (2) Most of the farmers in Whatcom County use only supplemental irrigation water; they are not as familiar with water-right requirements as farmers in Eastern Washington. Many, when they learned of the requirements, applied for new permits. (3) The bill is needed to address a legal quagmire in Whatcom County. (4) The farmers who will get junior rights under the bill know they will have to conserve water and work with fisheries interests. The bill will not result in the use of more water in the county.

Testimony Against: The bill should not apply to claims to the withdrawal of water in federal Indian reservations.

Testified: Dave Buyes and Henry Bierlink, Whatcom County Agricultural Preservation Committee; and Bill Garvin, Washington State Farm Bureau (in favor). Dawn Vyvyan, Yakima Tribal Council; and Mike Alberg (commented on the bill).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Agriculture & Ecology be substituted therefor and the substitute do pass. Signed by 22 members: Representatives Huff, Chairman; Clements, Vice Chairman; Pelesky, Vice Chairman; Basich; Beeksma; Brumsickle; Carlson; Chappell; Cooke; Crouse; Dyer; Foreman; Grant; Hargrove; Hickel; Lambert; Linville; McMorris; Reams; Sehlin; Sheahan and Talcott.

Minority Report: Do not pass. Signed by 6 members: Representatives H. Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Jacobsen; Kessler; Poulsen and Rust.

Staff: Nancy Stevenson (786-7137).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Agriculture & Ecology: No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Amnesty is appropriate for persons who put water to use for irrigation or stock-watering purposes without a permit before January 1, 1993. The state is not in a position to take enforcement action. This bill solves the problem.

Testimony Against: The bill allows illegal water use, undermines the adjudication process, and provides no protection for instream flows.

Testified: Representative Gary Chandler, prime sponsor (in favor). Mike Grady, Department of Community, Trade and Economic Development; and Judy Turpin, Washington Environmental Council (opposed).