

HOUSE BILL REPORT

SHB 2201

As Passed House:

February 2, 1996

Title: An act relating to water transfers and changes.

Brief Description: Authorizing a change in the use of water made surplus by certain activities and modifying transfer provisions.

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

Brief History:

Committee Activity:

Agriculture & Ecology: 1/9/96, 1/10/96, 1/11/96, 1/15/96 [DPS].

Floor Activity:

Passed House: 2/2/96, 68-26.

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: Do not pass. Signed by 5 members: Representatives R. Fisher; Murray; Ogden; Regala and Rust.

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 (DOE). 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. However, a related acreage expansion program set by DOE by rule as part of a groundwater management program is recognized by statute.

Groundwater Planning. The groundwater code permits the DOE to designate and manage groundwater areas, sub-areas, or depth zones to prevent the overdraft of groundwaters.

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. These rules apply only to a change of an agricultural use of water to another agricultural use or expanded agricultural use of 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 DOE 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.

The provision regarding water made surplus through changes in crops does not apply to water supplied by an irrigation district. If water supplied by such a district is made surplus through an individual water user's implementation of efficiency practices or technologies, the individual water user does not have a right to the use of the surplus water. However, the surplus water may be used for the benefit of the district generally. The use of such surplus water 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 DOE 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. If an irrigation district is within a federal reclamation project and the use of such surplus water results in the total acreage within the project exceeding the total irrigated acreage recorded with the DOE for the project's water right, the district is to notify the department of the change. The notification provides a change in the project's right. However, the change cannot exceed the total irrigated acreage authorized for the project by the United States.

Whether the water is or is not supplied by an irrigation district, the priority date for the right to use the surplus water is the same as for the original water right. These new rules regarding the use of surplus water do not authorize the use of a junior

water right in a manner that impairs or interferes with the use of a senior water right. These provisions regarding the use of surplus water do not apply in an area with a groundwater management program with an acreage expansion program set by rule that is in effect on the effective date of this bill.

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, under this bill, 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 until two years after the department has approved or denied the application. A provision of the surface water code regarding processing an application for a new water right expressly does not apply to transfers or changes of water rights.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (1) The use of saved water should be further expanded to use on noncontiguous lands or on leased lands. (2) The bill will encourage farmers to conserve water by providing an incentive to do so. (3) The conservation activities encouraged by the bill will reduce diversions of water.

Testimony Against: (1) Saving water by improving water conveyances does not save water that was lost to the system; such water was previously going into an aquifer or into a stream as return flows. The use of water saved in this way will be felt by other users and instream flows. (2) Applications for transfers should not be exempted from the investigations that apply to applications for new water permits. (3) The use of saved water should be subject to state review to preclude the transfer of unexercised, paper rights. (4) The DOE should determine whether existing rights or instream flows are impaired by the use of saved water.

Testified: Jerry Harper and Ralph Thomsen, Columbia/Snake Irrigators' Association; Mike Schwisow, Washington Water Resources Association; and Henry Beirlink, Whatcom County Agricultural Preservation Committee (in favor). Judy Turpin, Washington Environmental Council; Bruce Wishart, Sierra Club; and Dawn Vyvyan, Yakima Tribal Council (opposed). Linda Crerar, Department of Ecology (commented on the bill).