

HOUSE BILL REPORT

HB 2700

As Reported By House Committee On:

Agriculture & Ecology

Title: An act relating to water rights.

Brief Description: Revising provisions relating to water rights.

Sponsors: Representatives Mastin, Chandler and Honeyford.

Brief History:

Committee Activity:

Agriculture & Ecology: 1/29/96, 2/2/96 [DP].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: 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: Under certain circumstances, a statement of claim in the state's water claims registry is admissible in a general adjudication proceeding for water rights as prima facie evidence of the times of use and the quantity of water the claimant was withdrawing as of the year the statement was filed.

The "use it or lose it" provisions of state law provide for the relinquishment of a water right for nonuse for five consecutive years. They also provide "sufficient causes," or reasons, for the nonuse that are exempted from the relinquishment requirement. If it appears to the Department of Ecology that a person's water right has been relinquished for nonuse, the department is to notify the person that, unless he or she can show on appeal that the reason for the nonuse is one of those listed by statute as being such a "sufficient cause," the right will be declared relinquished. Upon appeal to the Pollution Control Hearings Board, the findings of fact set forth by

the department are prima facie evidence of the fact that the right has been relinquished.

Summary of Bill: A statement of claim for a water right in the state registry and the provisions of a water right certificate are each prima facie evidence of all aspects of the water right in any proceeding involving the water right. The burden of proof in demonstrating that any aspect of the right is invalid is on the party challenging its validity.

If a water right applies to the use of only naturally occurring water and a party claims that any part of the water used is artificially stored water, the party making the assertion has the burden of proving the assertion. A similar provision applies to rights to use artificially stored water.

All orders of the Department of Ecology regarding relinquishment of water rights are automatically appealed to the Pollution Control Hearings Board.

Appropriation: None.

Fiscal Note: Requested on January 26, 1996.

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

Testimony For: The current policy is stacked in favor of government: the department acts as the prosecutor and the judge, and its findings are given great weight on appeal.

Testimony Against: (1) It is already difficult to show that relinquishment has occurred. The bill will make it nearly impossible. (2) It is easier for a person using a water right to document use of the water than it is for the department to document nonuse.

Testified: Dick Ducharme, Yakima Valley Growers and Shippers (in favor); Bruce Wishart, Sierra Club (opposed); and Ken Slattery, Department of Ecology (responded to questions).