

HOUSE BILL REPORT

HB 1773

As Reported By House Committee On:

Agriculture & Ecology

Title: An act relating to water marketing.

Brief Description: Regulating the marketing of water.

Sponsors: Representatives Delvin, Mastin, Chandler, Mulliken, Clements, Schoesler, Hankins, Sheahan, Grant, Robertson and Honeyford.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/15/95, 2/16/95, 3/1/95 [DPS].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 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; Robertson and Schoesler.

Minority Report: Do not pass. Signed by 4 members: Representatives R. Fisher; Poulsen; Regala and Rust.

Staff: Bill Lynch (786-7092).

Background: The right to use water for a beneficial use remains appurtenant to the land or place upon which it is used. The right to use this water may be transferred to another, and becomes appurtenant to other land or place of use without loss of priority of right. The Department of Ecology must approve any such transfer.

Summary of Substitute Bill: Water conservancy districts may be created to establish water market transfer exchanges which may be used by any person who owns or holds a water right to list the right for sale or transfer. Water market transfers are limited to water conserved by the present user.

A water conservancy district may be initiated by a petition to the Department of Ecology either by: (a) a local water resource agency (an irrigation district, water

district, public utility district, city, reclamation district, water district, or cooperative or mutual corporation that serves 100 or more accounts); or (b) 12 or more water rights holders who divert water within one or more water resource inventory areas (WRIA).

The petition must contain the name and address of each petitioner, a brief description of the water right and use of each petitioner, identification of the geographic boundaries of any local water resource agency or WRIA to be included within the district, a statement of the need for the district, the proposed bylaws of the district, and identification of the individuals who will be appointed as initial directors.

The director of the Department of Ecology must act on the petition within 180 days or the petition is deemed approved. If the petition is approved, the local water resource agency or the director immediately appoints the initial directors who form and organize the district. If the petition is denied, the director must give specific reasons for the denial. People who are appointed as directors of the water conservancy district serve four-year terms.

A water conservancy district must establish procedures that are consistent with rules adopted by the department for the administration of approvals for water market transfers. The administration of the system is performed exclusively by the district, but the director may review the capability of any district to perform its duties. The director may suspend a district's authority to administer approvals for water transfers if it finds that the district lacks the capability to perform its duties, or that it has substantially failed to perform its duties in compliance with the law.

A transferor and transferee of any proposed water market transfer may apply to a water conservancy district for approval of a water transfer if the water proposed to be transferred is diverted or used, or would be diverted or used within the boundaries of the district if the transfer is approved. Water that is diverted or used within a district that is transferred to an instream use is considered to be used within the district. The district may specify the information that must be contained on an application. A transfer may only be approved if it can be made without injury or detriment to existing rights.

The district must publish notice of any application for a water market transfer and send notice to the appropriate state agencies. Interested parties may comment on the application. If the district determines that the transfer may be made without injuring existing rights of other water right holders, and the application is complete and complies with the law, the district issues a certificate conditionally approving the transfer, subject to review by the director.

The application of the transferor and transferee in any proposed water market transfer must include information that establishes to the director's satisfaction, the transferor's

entitlement to the quantity of water being transferred; and it must describe any applicable limits on the right to use water, including the place of diversion, place of use, source of supply, time of use, period of use, and the place of storage.

A rebuttable presumption is created that any water market transfer does not impair or injure any existing rights of third parties. A person who claims to be the holder of a right impaired by the proposed transfer has the right to a hearing before the district. Any water market transfer that is limited to the consumptive quantity of the transferor or a nonconsumptive use is conclusively presumed to cause no detriment to existing rights of third parties.

The department is authorized to review any proposed transfer approved by the district for compliance with its guidelines and other applicable law. The parties to a transfer or any third party whose water right is alleged to be impaired by a transfer may appeal the district's decision to the department.

The department shall review the district's decision and render its decision within 30 days of receipt of the request. The department may extend the 30-day time period for an additional 30 days on its own motion or upon consent of the parties to a transfer. If the department fails to act within these time frames, the district's action is deemed final. Upon approval of the transfer or nonaction of the department, the conditional certificate issued by the district becomes final and valid.

The decision of the department or the director to approve or deny a petition to form a district, or to suspend a district's powers, or to approve or deny a water market transfer, and any other final agency decision pertaining to water market transfers through water conservancy districts is subject to judicial review under the Administrative Procedures Act.

Each water conservancy district may establish a schedule of transaction fees and costs for its services, and may assess such charges to persons requesting these services. The fees may not exceed an amount necessary to cover the district's actual costs for the services provided. A water conservancy district may not levy taxes or issue bonds. Any municipal corporation that may petition for the formation of a district may contribute funds to the district to help defray general overhead and administrative costs.

The water market transfer program administered by water conservancy districts constitutes an alternative procedure for obtaining approval of a transfer or change of a water right. Any water right, or portion of a water right transferred becomes appurtenant to the other land or place of use without any loss of priority of right, so long as the proposed use by the buyer is a beneficial use that does not injure existing rights.

If an application for a transfer would transfer water rights from one irrigation district to another, the approval of the transfer must be conditioned upon the concurrence of each of the irrigation districts that the transfer will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of the irrigation districts.

The transfer of water rights through water conservancy districts does not apply to trust water rights acquired by the state through the funding of water conservation projects.

Substitute Bill Compared to Original Bill: The substitute bill limits water market transfers to water conserved by the present user. A definition of conserved water is added. Language is added to clarify that no water market transfer may be approved if it causes an injury or detriment to the existing rights of third parties.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill rewards people who practice conservation. The bill allows for local control under state guidelines. It protects the rights of farmers.

Testimony Against: Directors of the water conservancy districts should not be limited to people with water rights. The 30-day time period for the Department of Ecology to review a decision of the district may be too short. This may make water a commodity.

Testified: Bud Mercer, Pat Tucker and Darryll Olsen, Columbia-Snake River Irrigators Association (pro); Mary Burke (with concerns); Mary Pearson, Suquamish Tribe (con); Dawn Vyvyan, Yakima Indian Nation, Northwest Indian Fisheries Council, and Skagit System Cooperative (con); and Judy Turpin, Washington Environmental Council (con).