

HOUSE BILL REPORT

HB 1775

As Reported By House Committee On:

Agriculture & Ecology

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: 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].

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 Substitute Bill:

Water Spreading. If a portion of the water available under a water right is made surplus through the implementation of water efficient practices or technologies, the surplus water may be used by the person who holds the water right on the person's other, contiguous lands. This principle also applies to water made surplus through a change in the crops grown. The priority date for the water right for the surplus water is the same as for the original right. Limitations on adding additional irrigated acreage that are currently set in groundwater area or subarea management plans are not preempted by this authority.

If the water is provided by an irrigation district, this change in the use of the water must be approved by the district's board of directors. If it is not, the owner of the water right is to notify the Department of Ecology regarding the change and the department is to revise its records for the water right to reflect the change. If such changes would cause the authorized irrigated acreage within an irrigation district under the district's water right to be exceeded, the district is to notify the department and the department is to revise its records for the water right to reflect the change.

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 requirements for applications for new water rights do not apply to transfers of water rights.

Substitute Bill Compared to Original Bill: The substitute bill does not contain the new appeals process established by the original bill. Regarding the water made surplus, the substitute bill: authorizes the spreading of the water to the water right holder's own contiguous land, not the transfer of the water to others (as authorized by the original bill); and no longer requires the Department of Ecology to approve such changes in the use of the water. Added by the substitute bill are: provisions requiring irrigation districts to consider the effect of transfers and changes in the use of water provided by the district on the financial and operation integrity of the district; and limiting the exemption from the spreading rule to currently existing groundwater management programs, not any such programs.

Appropriation: None.

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

Effective Date of Substitute 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).