

# HOUSE BILL REPORT

## SHB 2199

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### As Amended by the Senate

**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:** By House Committee on Agriculture & Ecology (originally sponsored by 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)].

**Floor Activity:**

Passed House: 2/7/96, 71-26.

Senate Amended.

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### 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).

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### 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; Beeksmas; 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).

**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 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.

**EFFECT OF SENATE AMENDMENT(S):** The bill now applies only in a water resource inventory area (WRIA) for which more than 250 applications for water use or use modifications were pending on January 1, 1996, for water uses that commenced before January 1, 1993; and there was not a general adjudication proceeding for water rights filed in superior court on or before January 1, 1996.

**Permits to be Issued.** By June 30, 1997, the DOE must issue a water use permit to a person who satisfies the requirements of the House version of the bill who also filed under current law, before January 1, 1996, an application for the water beneficially

used. The period for filing a request for this new permit is shortened to a seven-month period (from a 10-month period). Two of the items that qualify as the evidence required by the House version of the bill for substantiating the prior use of the water are altered.

***Permit Conditions.*** The permit issued to such a person must be conditioned to protect stream flows consistent with adopted rules. The DOE must review these rules and the requirements for additional stream segments for which rules have not been adopted. The review and mitigating conditions must consider the recommendations of a broad-based watershed planning task force applicable to the area. The DOE must consider alternatives to mitigate the impacts of permit issuance on stream flows and on other existing water rights; it must allow a change in a source of supply from surface water to a ground water source that is not in immediate hydraulic continuity with surface water as such mitigation unless it finds, as supported by the permit application record, that the proposed change will be significantly detrimental to existing rights or to minimum necessary stream flows. If the DOE finds that the conditions of such a permit have been implemented and the appropriation has been perfected, it is to issue a certificate of water right.

A decision regarding the conditions to be included in a permit, but not the permit issuance, is appealable to the pollution control hearings board. Such a permit may not affect or impair a water right, or an application for a water right, existing before January 1, 1996.

***Regulating Between Water Users.*** Effective July 1, 1997, in any WRIA for which permits have been issued in this manner, the DOE is authorized to regulate among water rights claimants to protect adopted stream flows or to enforce the conditions of any permit issued for water withdrawals from water sources within the area. In issuing such regulatory orders, the DOE must first determine whether any use of water is based on a valid existing water right by investigating and making a tentative determination as to the priority, quantity, place of use, and point of diversion of the water right. Unless circumstances requiring immediate action exist, notice must be given before an order of regulation is issued. The notice must state that the order will be issued in three days unless the person to be regulated can show cause in writing why the decision is in error. Such an order is effective immediately upon issuance, unless otherwise stated in the order. The DOE's determination regarding the validity of a water right is not binding in any subsequent general adjudication, but is prima facie evidence of the existence and conditions of the right.

***Null and Void.*** If specific funding for the bill is not provided by June 30, 1996, in the omnibus appropriations act, this bill is null and void.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** (Agriculture & Ecology) (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.

(Appropriations) 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:** (Agriculture & Ecology) The bill should not apply to claims to the withdrawal of water in federal Indian reservations.

(Appropriations) The bill allows illegal water use, undermines the adjudication process, and provides no protection for instream flows.

**Testified:** (Agriculture & Ecology) 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).

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