

HOUSE BILL REPORT

SSB 6334

As Reported By House Committee On:

Agriculture & Ecology

Title: An act relating to the processing of water rights.

Brief Description: Changing water rights administration.

Sponsors: Senate Committee on Ecology & Parks (originally sponsored by Senators Rasmussen, Swecker, Haugen, Fraser, Morton and Sutherland).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/21/96, 2/22/96 [DPA].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. 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:

Water Use Permits. With certain exceptions, the acquisition of new rights to water is subject to a permit system administered by the Department of Ecology. The date of priority of a right acquired under the state's water right permit system is the date the original application for the permit is filed with the department. If the application is defective, it is to be returned to the applicant for correction without loss of priority.

Work is to begin on a project for which a permit has been granted within a reasonable time set by the department, and must be prosecuted with diligence and completed within the time prescribed by the department. The deadlines set by the department may be extended for good cause. If the appropriation has been perfected as required, the department is to issue the permit holder a water right certificate. Appeals of the

department's permit decisions are made to the Pollution Control Hearings Board. Decisions of the board may be appealed to superior court.

Reservations of Water for Future Use. In conjunction with its state water resources program developed under the Water Resources Act, the department may reserve and set aside waters for beneficial use in the future. Such a reservation constitutes an appropriation with a priority date that is the date the reservation is established. If a permit is subsequently issued for the use of water reserved in this manner, the priority date of the permit is the priority date of the reservation.

Summary of Amended Bill:

Applications for Water Use Permits. A list is provided that identifies the information that must appear on an application filed after January 1, 1997, for the application to be vested with a priority date. An applicant may appeal to the Pollution Control Hearings Board (PCHB) the department's determination regarding the nature and extent of the information needed in support of an application.

Some of the "good causes" for which the department may, under current law, extend the time listed on a water right permit for perfecting (implementing) the permit and right are now specified by statute. They include active military service during a military crisis; nonvoluntary military service; a court order having the effect of stopping the construction work; delays in securing other permits necessary to proceed with the development; a single transfer in ownership of the property; implementation of water efficiency measures; encountering unanticipated physical impediments to construction; and encountering generally depressed economic conditions. Cancellation of a permit must be made by a departmental order, and notice of it must be given to the permit holder by certified mail.

Appeals. Appeals of certain water-related agency actions by the Department of Ecology are appealable to the PCHB or to the superior court in the county where the withdrawal would or does take place. Appeals to superior court are de novo. A party electing to appeal such a decision to the PCHB may elect either an informal or formal hearing. If one of the parties requests an informal hearing, an informal hearing must be held.

"Water-related agency actions" by the department include (1) decisions to grant or deny permits or certificates for a right to the use of water, or to amend, change, or transfer such a right; (2) decisions to enforce the conditions of a permit for, or right to, the use of water or to require any person to discontinue the use of water; and (3) a decision of the department regarding the nature and extent of the information required in support of an application for a water right permit.

De minimis Appropriations. The department must establish streamlined procedures for processing applications for "de minimis" uses of surface waters that have been reserved and set aside for future beneficial use. A "de minimis" use is a diversion and use of surface water in an amount not exceeding 450 gallons per day and 0.02 cubic feet per second. The application must be issued or denied within 60 days of the publication of the public notice regarding the application. The evaluation and report requirements for applications are waived if, at the time the reservation was established, the department determined that use of the reserved water would not impair water rights existing at the time the reservation was established or be detrimental to the public interest.

Short-term Uses. The department may authorize short-term uses of water without a publication of notice and without its investigation report. However, the substance of the statutory criteria for issuing a permit must be met, and minimally sufficient flows must be retained in a stream affected by a short-term use to maintain instream uses and to protect existing water rights. A "short-term use" is one that will not exceed one year in duration and includes a use in construction, dust control, dewatering, and short-term planned fire suppression activities. The department is to expedite its consideration of the request to the extent practicable.

Amended Bill Compared to Substitute Bill: Deleted by the amendment are the provisions of the substitute Senate bill: establishing the content of notices published regarding permit applications and setting a 30-day protest period; expressly placing the burden of proof on an appellant regarding application decisions of the department; requiring information submitted by an applicant to satisfy protocols set by the department, and identifying certain limits on the information that may be required of an applicant and its verification by the department; requiring that a summary of the record regarding a proposed decision on an application be made available to the public, and setting a 30-day public comment period regarding the proposed decision; requiring that affected Indian tribes be notified regarding the issuance of a permit; encouraging the consolidation of certain applications under single ownership; providing for the publication of a registry of application decisions; and prohibiting the use of the "de minimis" withdrawal procedure for urban growth areas or areas served by a public water system.

The provisions of the substitute Senate bill authorizing the department to identify by rule the information that is needed for an application to be considered to be complete are replaced in the amendment by provisions identifying the information that must appear on an application for the application to be vested with a priority date. The provisions of the substitute Senate bill providing for single-member PCHB review of certain decisions of the department are replaced by provisions authorizing an appellant to appeal decisions to either the PCHB or the superior court in the affected county for de novo review, and authorizing informal hearings of such decisions by the PCHB and de novo court review of PCHB decisions following such hearings. In the

amendment, the water that must be retained in a stream affected by a short-term water use is the water minimally sufficient for certain objectives.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (On bill as passed by the Senate) (1) The bill is largely the result of the work done by the Water Rights Fees Task Force regarding the processing of water right applications. It will provide administrative efficiencies and help break the permit processing log jam. (2) The bill will streamline PCHB review of agency decisions.

Testimony Against: (On bill as passed by the Senate) (1) The additional information currently required for an application for a municipal water right should not be deleted. (2) The bill gives the department too much discretion. A short list of the information needed for an applicant to be vested with a priority date should be set in statute; the department should not be permitted to specify this information by rule.

Testified: Senator Rasmussen, prime sponsor; Senator Fraser; Judy Turpin, Washington Environmental Council; Denise Vincent, Camano Laguna Vista (in favor as passed by the Senate). Steve Linstrom, SnoKing Water District (commented on the bill). Dick Ducharme, Building Industry Association of Washington and Yakima Growers/Shippers Association (opposed as passed by the Senate).