

SENATE BILL REPORT

SHB 2199

As Reported By Senate Committee On:
Ecology & Parks, February 23, 1996
Ways & Means, February 26, 1996

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: 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: Ecology & Parks: 2/20/96, 2/23/96 [DPA].
Ways & Means: 2/26/96 [DPA].

SENATE COMMITTEE ON ECOLOGY & PARKS

Majority Report: Do pass as amended.

Signed by Senators Fraser, Chair; Fairley, Vice Chair; McAuliffe and Spanel.

Staff: Gary Wilburn (786-7453)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Bauer, Drew, Fraser, Hargrove, Kohl, Pelz, Quigley, Sheldon, Snyder, Spanel, Sutherland, West, Winsley and Wojahn.

Staff: Cathy Baker (786-7708)

Background: With the adoption of the Surface Water Code in 1917 and the Groundwater Code in 1945, new rights to the use of water were to be established under a permit system. However, certain uses of groundwater not exceeding 5,000 gallons per day have been exempt 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 in a variety of ways and under a variety of water doctrines. These pre-code rights to surface water could be obtained by appropriation, prescription, or by virtue of riparian land ownership.

In some basins of the state, there are numerous water users who have not obtained a valid water right by obtaining a permit for the use. Many of these users have submitted an

application to the state within the recent past, and seek to have their future use a legal one through a valid water right.

Summary of Amended Bill: The department is required to issue a water right permit by June 30, 1997 to certain persons in any basin with 250 or more pending applications for permits to authorize uses commenced prior to 1993 and in which there is no pending general stream adjudication proceeding. The permits are to include conditions to protect streamflows and existing rights. The department is to review existing streamflow rules and requirements for stream segments without adopted rules for the purpose of developing permit conditions, and in this review is to accord strong consideration to the recommendations of a watershed planning task force applicable to the area. The department is to consider mitigation alternatives, and shall allow moving a surface water diversion to a ground water source as mitigation where the source is not in immediate hydraulic continuity with surface water, unless the department finds there would be a significant detriment to existing rights or streamflows.

Persons eligible for such permits in the eligible basins are those who meet all of the following requirements: (1) the person filed an application with the Department of Ecology for a water right or water right transfer before April 1, 1996; (2) the person placed water to beneficial use for irrigation or stock watering purposes before January 1, 1993, but a permit or certificate is not issued by the department or its predecessor for the use; and (3) the person files a statement of claim within a new claim filing period, supported by evidence of the water use, such as photographs, receipt of equipment purchases, well records, and personal records.

The priority date for such a water right is the date of filing the request during the filing period. The department's decisions upon permit conditions are appealable to the Pollution Control Hearings Board. Existing rights and applications for water rights existing before April 1, 1996 are not to be impaired by permits issued. In basins where permits have been issued under the legislation, the Department of Ecology may regulate among water right claimants following procedures specified, including prior notice of the issuance of a regulatory order.

Amended Bill Compared to Substitute Bill: The amendment adds the requirement that permits be issued by June 30, 1997 instead of a water right granted by operation of the legislation. The amendment narrows the applicability of the legislation to only basins with 250 or more pending applications for pre-existing water uses. The provisions regarding development and inclusion of permit conditions are added by the amendment. The priority date of the right is the date of filing the request under the amendment as compared with the effective date of the legislation under the original bill. The amendment allows persons with applications filed before April 1, 1996 to be eligible as compared with January 1, 1996 in the original bill. The amendment ends the request filing period on March 31, 1997 instead of June 30, 1997 as in the original bill. The amendment adds the provisions regarding appeal of permit conditions and administrative regulatory authority as among water rights claimants.

Ways & Means Amendment Compared to Ecology & Parks Amendment: A null and void clause is added making the bill null and void unless funding is provided in the Omnibus Appropriations Act.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For (Ecology & Parks): In the Nooksack basin with its substantial rainfall, very few farmers were aware that a water right permit was necessary, and the bill will provide a mechanism to get better records of water use and help to preserve agricultural uses of the land from conversion to other uses.

Testimony Against (Ecology & Parks): The bill is not fair to other applicants for water rights who "played by the rules" and have not commenced water use while waiting for a permit decision. These water uses authorized under this legislation may have a detrimental impact on streamflows and these allocation decisions should be part of an overall watershed plan as is being developed now by the Nooksack task force.

Testified (Ecology & Parks): Representative Chandler (prime sponsor); Henry Bierlink, WCAPC (pro); Mary Campbell (con); Ken Slattery, Dept of Ecology (con); Bruce Wishart, Sierra Club (con); Dawn Vyvyan, Yakama Nation (con); Representative Linville (pro).

Testimony For (Ways & Means): None.

Testimony Against (Ways & Means): The Senate striking amendment narrows the bill to one geographic area. It should be expanded to address the entire state.

Testified (Ways & Means): Representative Chandler, original prime sponsor; Carol Fleskes, Department of Ecology; Ken Slattery, Department of Ecology.