

SENATE BILL REPORT

SB 6446

As Reported By Senate Committee On:
Ecology & Parks, February 1, 1996

Title: An act relating to water rights for the use of water for instream purposes.

Brief Description: Providing for water rights for instream purposes.

Sponsors: Senators Fraser, Swecker, Spanel, Sutherland, Drew, Hochstatter and Winsley.

Brief History:

Committee Activity: Ecology & Parks: 1/23/96, 1/26/96, 2/1/96 [DPS].

SENATE COMMITTEE ON ECOLOGY & PARKS

Majority Report: That Substitute Senate Bill No. 6446 be substituted therefor, and the substitute bill do pass.

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

Staff: Susan Ridgley (786-7444)

Background: One important goal of the state's water policy is that the quality and quantity of the water retained in streams and lakes be sufficient to protect instream and natural values and rights. Water can only be appropriated for a "beneficial use," which includes not only diversions for agricultural, commercial and power uses, but also instream uses for the maintenance and enhancement of fish and wildlife, preservation of aesthetic values, and the needs of navigation.

The current water code sets up appropriation procedures that applicants and the Department of Ecology must follow to issue a permitted, and eventually certificated, water right. The procedure specifies how requests for agricultural, power, reservoir construction, municipal water supply and mining uses should be handled. There is no specified procedure to apply for instream use of water. In other states, instream uses of water provide a substantial component of their permits.

The law does set up a category of rights called trust water rights. The state can acquire water rights through purchase or gift, but not through condemnation, and these are managed as trust water rights.

Summary of Substitute Bill: Individuals and governments are explicitly allowed to acquire rights for "instream uses," without a physical diversion of water. A water right holder can temporarily transfer a right to an instream use, and later transfer all or part of it back to the initial use. The transfer of a water right to an instream use does not need to be approved by the Department of Ecology, although they should be notified of the change in use.

If the state acquires water rights conditioned on its use being limited to instream use, it must be managed as a trust water right.

Substitute Bill Compared to Original Bill: The substitute bill allows for the temporary transfer of a water right to an instream use, and later reversion back to the original use.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This is a good move towards the protection of instream uses. It clarifies that a donation which is intended only to stay in the stream cannot be reappropriated elsewhere.

Testimony Against: None.

Testified: Ron Shultz, Nat. Audubon Soc. (pro); Terry Williams, NW Indian Fisheries Commission (pro); Judy Turpin, WA Environmental Council (pro).