

HOUSE BILL REPORT

HB 1118

As Reported By House Committee On:

Agriculture & Ecology
Appropriations

Title: An act relating to water rights claims.

Brief Description: Reopening the water rights claim filing period.

Sponsors: Representatives Mastin, Chandler, Johnson, Boldt and Honeyford.

Brief History:

Committee Activity:

Agriculture & Ecology: 1/23/97, 1/27/97, 2/10/97 [DPS];
Appropriations: 2/24/97, 2/27/97 [DPS(AGEC)].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper; Delvin; Koster; Mastin and Sump.

Minority Report: Do not pass. Signed by 1 member: Representative Regala.

Staff: Kenneth Hirst (786-7105).

Background: Code and Pre-Code Rights. 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 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 the enactment of the 1917 and 1945 codes, rights to water were obtained in a variety of ways and under a variety of water doctrines. The surface water code expressly acknowledges the validity of water rights established prior to its enactment. The use of public groundwater under the 1945 act is subject to existing rights.

Registration Required. With the enactment of legislation in 1967, the state required persons with claims of rights to the use of water based on something other than a water right permit or certificate, to register the claims with the Department of Ecology. In general, claims had to be filed by June 30, 1974. However, the filing period was reopened on a limited basis in 1979 and again in 1985. A person who failed to file a statement of claim as required is to be deemed to have waived and relinquished the right.

Summary of Substitute Bill: New Claim Filing Period. A new period for filing statements of claim for water rights is established. The period begins on September 1, 1997, and ends at midnight on June 30, 1998. This reopening of the filing period is for persons whose water rights pre-date the water codes but who failed to file statements of claims for the rights during the previous filing periods. The new filing period is not to impair existing rights and a claim filed under it is subordinate to rights embodied in water right permits and certificates issued before the claim is filed, and is subordinate to claims filed in the state registry during previous filing periods. The new filing period does not apply to groundwater rights which may be obtained without a permit under current law, rights for which a water right permit or certificate have been issued, or claims that have been previously filed in the state registry. Claims cannot be filed for the withdrawal of water in any area that is the subject of an ongoing general adjudication proceeding for water rights. Nor may they be filed for rights in an area that is currently regulated under rules establishing acreage expansion limitations as part of a groundwater management plan.

The Department of Ecology (DOE) must publish a notice regarding the new filing period at least once each week during the month of August 1997, and at least once each month during the filing period. The DOE must also prepare, make available to the public, and distribute to the media, information describing the types of rights for which claims must be filed, the effect of filing, the effect of not filing, and other information regarding filings and statements of claim.

Amendments to Claims Already on File. Amendments to statements of claims that are already in the claims registry may be submitted to correct errors in the statements. Such an amendment must be filed during the new filing period and the claimant must attest that the amendment does not constitute an expansion of the right for which the original statement of claim was intended.

Prohibition Against Certain Agency Actions. During the period beginning March 1, 1994, and ending with the close of the new filing period, neither the DOE nor the Pollution Control Hearings Board may determine or find that relinquishment of a right has occurred as a result of a person's failure to file a claim. If such a determination or finding has been issued after March 1, 1994, but before the effective date of the bill, the determination or finding is void and the remedy for the person against whom it was made is to file a new claim or an amendment to a previously registered claim.

Availability of Staff and Information. The DOE must ensure that its employees are readily available for inquiries regarding statements of claim and that all of the information it has at its disposal is available to the person making the inquiry. The department must provide water right records to requesters within 10 working days in certain circumstances.

Substitute Bill Compared to Original Bill: The substitute bill prohibits claims from being filed in an area governed by an acreage expansion limitation program for groundwater. It also clarifies that the rights to be filed under the bill are the historical rights that pre-date the water codes but for which claims were not filed previously and alters the notice to be published regarding the claim filing period accordingly.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (1) The relinquishment law is harsh. The 80-year old owner of a King County farm did not know what the announcement for the previous filing period meant. She did not file. The development rights for the farm have been sold to King County, which means the farm can only be used for agriculture, but without a water right it cannot be used for agriculture either. The bill will provide relief. (2) The announcements made and the information supplied by the state regarding the original filing period were confusing. As a result, people with very old water rights did not file statements of claim; others who did not have to file, filed. A new filing period with a clear notice and better information from the state should be provided.

Testimony Against: None.

Testified: Tom McBride; and Scott Barr (in favor).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Agriculture & Ecology be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Benson; Carlson; Chopp; Cooke; Crouse; Dyer; Grant; Kenney; Kessler; Lambert; Linville; Mastin; McMorris; Parlette; Poulsen; D. Schmidt; Sehlin; Sheahan and Talcott.

Minority Report: Do not pass. Signed by 5 members: Representatives H. Sommers, Ranking Minority Member; Cody; Keiser; Regala and Tokuda.

Staff: Nancy Stevenson (786-7137).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Agriculture & Ecology: No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The committee is requested to support the bill.

Testimony Against: Although rights filed under the reopened filing period would be junior to existing water rights, they may still, as a practical matter, infringe upon senior rights. Under the "Sinking Creek" decision, the Department of Ecology cannot regulate among users. Seattle's senior water rights serve 1.2 million people, but are uncertificated rights. It is difficult to protect these kinds of senior rights. In addition, the department must be properly staffed to process the amendments to existing claims allowed under the bill to ensure that corrections of errors, not changes in rights, are made as "amendments."

Testified: Representative Mastin, prime sponsor (pro); and Bill Alves, Seattle Public Utilities (con).