

HOUSE BILL REPORT

SHB 1272

As Amended by the Senate

Title: An act relating to water transfers.

Brief Description: Establishing water conservancy boards.

Sponsors: By House Committee on Agriculture & Ecology (originally sponsored by Representatives Delvin, Chandler, Robertson, McMorris, Honeyford and Mulliken).

Brief History:

Committee Activity:

Agriculture & Ecology: 1/29/97, 2/12/97 [DPS].

Floor Activity:

Passed House: 2/28/97, 96-0.

Senate Amended.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper; Delvin; Koster; Mastin; Regala and Sump.

Staff: Bill Lynch (786-7092).

Background: The right to use water for a beneficial use remains appurtenant to the land where it is used. A water right may be transferred to another person if it can be made without causing an injury to existing water rights. If the water right is transferred, it becomes appurtenant to the land where it was transferred without any loss of priority.

In order to transfer a water right, an application must be filed with the Department of Ecology. The department must publish notice of the application in a newspaper of general circulation in the area. If the transfer may be made without injuring existing rights, then the department must issue the applicant a certificate granting the transfer. One certificate is filed with the department and a duplicate is given to the applicant who may file it with the county auditor.

If an application proposes to transfer a water right from one irrigation district to another, the department must receive concurrence from each of the irrigation districts that the transfer will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of the district. If the transfer will only involve a change in place of use within an irrigation district, then the only approval needed is from the board of directors of the irrigation district.

Interest has been expressed in allowing water transfers to be conditionally approved at the local level.

Summary of Bill: Water conservancy boards may be formed to establish a water transfer exchange through which any person who owns or holds a water right may list the right for sale or transfer.

Formation. A county legislative authority may form a water conservancy board subject to approval by the director of the Department of Ecology. The director of the department has 45 days to approve or deny the resolution creating the board.

A water conservancy board may be initiated in any one of the following ways: (a) the county legislative authority may adopt a resolution on its own motion; (b) a resolution may be presented to the county legislative authority calling for the board's creation from an irrigation district, reclamation district, city operating a public water system, public utility district operating a public water system, or a water-sewer district operating a public water system; (c) a resolution may be submitted from a cooperative or mutual corporation serving 100 or more accounts; (d) a petition may be submitted signed by five or more water-right holders who divert water for use within the county; or (e) any combination of the above.

The resolution or petition must: (1) state the need for the board, (2) identify the geographic boundaries where there is an initial interest in transacting water sales or transfers, (3) describe the proposed method for funding the operation of the board, and (4) include the proposed bylaws that will govern the operation of the board. If a county determines that the resolution or petition is sufficient, it must hold at least one public hearing on the creation of the board. The county may adopt a resolution approving the creation of a board if it finds that it is in the public interest.

The county forwards the resolution approving the creation of the board to the director of Ecology. If the director approves the creation of the board, a description of the necessary training for the commissioners of the board must be included with the notice of approval. The director is required to adopt rules for minimum training and continuing education for commissioners. Training must include an overview of state water law and hydrology.

Each board consists of three commissioners. Commissioners are appointed by the county legislative authority for six-year terms. Individual water-right holders who divert water for use in the county must be represented on the board. A commissioner cannot participate in board decisions until completing the necessary training. Commissioners serve without compensation but may be reimbursed for travel and training expenses.

Powers. A water conservancy board is considered to be a separate unit of local government and operates on a county-wide basis. A board may sue and be sued, acquire and sell real and personal property, hire employees, and enter into and perform all necessary contracts necessary to carry out its functions. Boards are to be independently funded, as determined by the board but do not have the power of taxation. Boards do not have the power of eminent domain.

A water conservancy board must establish procedures that are consistent with all applicable laws. The board may establish a water transfer exchange through which all or part of a water right may be listed for sale or transfer. Each board is required to maintain and publish all information available to the board concerning water rights listed with the board and any application to the board for a approval of a water transfer. The board may approve transfers of water rights that have not been adjudicated. Water transfers approved by the board must remain within existing beneficial uses. Transfers of water used for agriculture are limited to short- or long-term leases. Any transfer approved by the board is subject to final approval by the director of Ecology.

A transferor and transferee of any proposed water transfer may apply to a board for approval of a transfer if the water that will be transferred is currently diverted or used within the geographic boundaries of the board, or would be diverted or used within the boundaries of the board if the transfer is approved. Applications for transfers must be made on forms provided by the department.

The board may require such information in the application as needed in order to review and act on the proposed transfer. The application must include information sufficient to establish to the board's satisfaction that the transferor is entitled to the quantity of water being transferred. It must also describe any applicable existing limitations on the right to use the water, including the point of diversion or withdrawal, place of use, source of supply, purpose of use, time of use, quantity of use permitted, period of use, and the place of storage.

The board must publish notice of the application and send notice to the applicable state agencies. Any senior water-right holder who claims a detriment or injury to an existing water right as a result of the proposed transfer may intervene, and other persons may submit comments. The board may approve the application if it is complete, meets the requirements of the law, and does not cause an injury or

detriment to existing rights of senior water-right holders. If the board approves a transfer, it must issue the applicant a certificate conditionally approving the transfer, subject to review by the director.

A person who claims to be the holder of a senior water right that will be impaired because of the proposed transfer is entitled to a hearing before the board. The board may approve a water right that impairs the rights of a third party if the applicant or impaired party agree on compensation for the impairment.

Once a transfer is approved by the board and the proposed certificate conditionally approving the transfer is issued, the board must submit a copy of the certificate to the department for review. The board must include a report summarizing its findings on which it relied in approving the transfer. The board must also send notice to any person who alleges that his or her water right will be impaired by the transfer, or any person who requested notice. Any person who feels that his or her water right is impaired may file objections to the transfer with the department.

The director has 45 days of receipt to review the board's decision to grant a transfer, and may affirm, reverse, or modify the decision. The director may extend the time period for an additional 30 days upon the consent of the parties. If the director fails to act within the prescribed time period, the transfer is considered approved. Upon approval of the transfer or nonaction by the department, the conditional certificate issued by the board becomes final and valid.

The decision of the department to approve or deny a petition to form a board, or to approve or deny a water transfer may be appealed to superior court.

Miscellaneous. The county or department is not liable for damages arising out of transfers approved by the board. A person who leases a water right cannot have that right lost by relinquishment due to the nonuse of the lessee. Commissioners may transfer water rights without it constituting a violation of the municipal ethics laws. The requirements necessary for the approval of interties are not affected. Other water transfer laws are unaffected. Transfers of water between irrigation districts require the concurrence of both irrigation districts.

EFFECT OF SENATE AMENDMENT(S): Water transfers are appealable in the same manner as other water right decisions. Activities by water conservancy boards are subject to the Open Public Meetings Act. A commissioner with an ownership interest in a water right approval for transfer before the board cannot participate in the review or decision on the application. The Department of Ecology must report biennially to the activities of the boards. The authority of the director of the DOE to adopt rules on the boards is made permissive. A commissioner must be a resident of the county in which the board is created, or a resident of a contiguous county. Technical changes are made.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This issue has been worked for a few years, and it is drafted from a state-wide perspective. The state keeps the right to review, this only expedites the process. This will help facilitate water transfers and allow more options for areas where water is fully allocated. This will also relieve pressure on an area to develop more water rights. This allows for better management of existing resources. This is particularly important for the potato industry because that crop requires rotation because of pests.

Testimony Against: None.

Testified: Columbia-Snake River Irrigators Association: Jerry Harper, Porky Thomsen, Darryll Olsen, Bud Mercer; and Mike Schwisow, Washington State Potato Association (in favor).