

# SENATE BILL REPORT

## SHB 1118

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As Reported By Senate Committee On:  
Agriculture & Environment, April 3, 1997  
Ways & Means, April 7, 1997

**Title:** An act relating to water rights claims.

**Brief Description:** Reopening the water rights claim filing period.

**Sponsors:** House Committee on Agriculture & Ecology (originally sponsored by Representatives Mastin, Chandler, Johnson, Boldt and Honeyford).

**Brief History:**

**Committee Activity:** Agriculture & Environment: 3/26/97, 4/3/97 [DP-WM, DNP].  
Ways & Means: 4/7/97 [DP].

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### SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

**Majority Report:** Do pass and be referred to Committee on Ways & Means.  
Signed by Senators Morton, Chair; Swecker, Vice Chair; Newhouse and Oke.

**Minority Report:** Do not pass.  
Signed by Senators Fraser and McAuliffe.

**Staff:** Bob Lee (786-7404)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.  
Signed by Senators West, Chair; Strannigan, Vice Chair; Hochstatter, Long, Loveland, McDonald, Roach, Rossi, Schow, Swecker, Winsley and Zarelli.

**Staff:** Cathy Baker (786-7708)

**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 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 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.

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 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. 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 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. 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 ten working days in certain circumstances.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For (Agriculture & Environment):** The requirement imposed in the early 1970s that every person with a pre-1917 surface water right or a pre-1945 ground water right register their water right with the state was one that was not known by every one. This bill provides one more chance for those who were unaware of the requirement.

**Testimony Against (Agriculture & Environment):** Though this bill provides a very junior water right for those who file, there are concerns that there will be some areas that instream flow levels have not been established that could be negatively affected.

**Testified (Agriculture & Environment):** Thomas MacBride (pro); Dawn Vyvyan, Yakama Indian National (con); Kathleen Collins, Washington Water Policy Alliance (pro); Ken Slattery, Dept. of Ecology.

**Testimony For (Ways & Means):** There are still a number of water right holders throughout the state who have not registered their pre-1917 surface water or pre-1945 groundwater rights with the state. The bill provides another opportunity for these individuals to register their claims.

**Testimony Against (Ways & Means):** None.

**Testified (Ways & Means):** Kathleen Collins, Washington Water Policy Alliance (pro).