

# HOUSE BILL REPORT

## SSB 6525

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### As Reported By House Committee On:

Agriculture & Ecology

**Title:** An act relating to prioritizing the processing of applications for water rights changes and transfers.

**Brief Description:** Prioritizing the processing of applications for water rights changes and transfers.

**Sponsors:** Senate Committee on Environmental Quality & Water Resources (originally sponsored by Senators Fraser, Swecker, Jacobsen, Eide, McAuliffe and Gardner).

### Brief History:

#### Committee Activity:

Agriculture & Ecology: 2/17/00, 2/25/00 [DPA].

#### Brief Summary of Substitute Bill (As Amended by House Committee)

- Allows decisions on applications for transfers of existing water rights to be processed independently from applications for new water right permits and does not protect the latter from impairment or give them priority for available water when applications for transfers from the same water source are processed.
- Establishes the order in which applications for transfers are to be considered, provides exceptions to that order, and establishes publication requirements and a public comment period for these applications.
- Prohibits a state agency or a water conservancy board from requiring an applicant to give up a portion of the applicant's water right.
- Authorizes transfers of water rights governed by the Family Farm Water Act to non-irrigation use.

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## HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** Do pass as amended. Signed by 8 members: Representatives G. Chandler, Republican Co-Chair; Koster, Republican Vice Chair; B. Chandler; Delvin; Fortunato; Grant; Schoesler and Sump.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Anderson; Reardon; Stensen and Wood.

**Staff:** Bill Lynch (786-7092) and Kenneth Hirst (786-7105).

**Background:**

State water law authorizes the holder of an existing surface water right to file an application for a transfer or change in place of use, point of diversion, or purpose of use of the water. The holder of an existing ground water right may file an application for an amendment to change the place of use, well location, or manner of use under certain circumstances. Changes in water rights may also be filed for changes on a seasonal or temporary basis.

In a 1983 decision, the state's supreme court held that an individual's place in line for a permit for a new water right is an existing right to be considered when considering changes or transfers. In a more recent case, the state supreme court upheld the department's practice of batching applications by watershed for purposes of processing, but required the department to use the rule-making process to establish the policies for prioritizing applications.

An application for a new water right requires notice to the general public. There is no similar statutory requirement for the public to be notified regarding a proposed change or transfer in a water right.

The Family Farm Water Act, approved by the voters in 1977, establishes limitations on the use of water authorized under new water right permits for irrigating agricultural lands. It requires that the holder of a family farm permit have a controlling interest in no more than 2,000 acres of land irrigated under permits acquired after the effective date of the act. The act expressly authorizes a person who holds a family farm permit to transfer the controlling interest in the land irrigated to another person who also qualifies for a family farm permit, but prohibits water withdrawn under such a permit to be used on land that does not qualify as a family farm.

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**Summary of Amended Bill:**

The Department of Ecology (DOE) may process and render decisions on applications for changes, transfers, and amendments of existing water rights independently from processing and making decisions on applications for new water right permits. The latter are not entitled to protection from impairment or given priority for any available water when applications for changes, transfers, or amendments from the same water source are processed.

In general, applications for changes, transfers, or amendments regarding water from the same water source are to be processed in the order in which they were filed with the DOE or a water conservancy board. This general rule does not apply to the DOE's processing of a decision made by a water conservancy board, or if there is insufficient information to render a decision on an application and the information cannot be obtained in a timely manner. It also does not apply if an application: would alleviate a public health and safety emergency or otherwise preserve public health and safety; will move a point of diversion or withdrawal, replace a surface water diversion with a groundwater withdrawal (or visa versa), or change the season of use when the action assists in the recovery of fish listed under the federal Endangered Species Act as threatened or endangered; will result in providing public water supplies for at least one city and one town or at least two cities and will meet the general needs of the public for a regional area; is for a temporary or preliminary permit or seasonal change; or is for an emergent or emergency circumstance under the drought or intertie laws. The general rule also does not apply if the application was filed by a claimant in a water rights adjudication and a decision is needed expeditiously to ensure that orders or decrees of the superior court will be representative of the current water situation.

Notice of such an application must be published as currently required for applications for surface water permits although the DOE may also post notice of the application on the Internet. The department or a water conservancy board must consider all comments received in writing by mail or personal delivery that are received within 30 days of the last newspaper publication.

The DOE, any other state agency, or a water conservancy board cannot require an applicant to give up a valid right or claim to any part of the applicant's water right.

The DOE may adopt implementing rules that strictly adhere to these provisions.

The Family Farm Water Act does not apply to trust water rights or to the change, transfer, or amendment of a water right established under the act to a use other than an irrigation use. A subsequent re-transfer of the right to an irrigation use is governed by the limitations established by the act.

**Amended Bill Compared to Substitute Bill:** Added by the amendment are the provisions: establishing the order in which applications for changes, transfers, and

amendments are considered and providing exceptions to that order; establishing publication requirements and setting a public comment period for these applications; prohibiting a state agency or a water conservancy board from requiring an applicant to give up a portion of the applicant's water right; authorizing rules of strict interpretation rather than acknowledging current rules and a public interest test; and authorizing transfers of water rights governed by the Family Farm Water Act under certain circumstances.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** (Substitute bill): 1) The bill would allow applications for transferring existing water rights to be processed separately from applications for new water rights because the DOE would not have to consider the applications for new rights when processing the transfers. It would address the backlog of approximately 2,000 applications for transfers. 2) The problem now is that no application line is moving. The bill will allow an express lane for those who are not requesting to use new water resources but to transfer existing rights; it will provide opportunities for a market in water. 3) The bill is an improvement for areas that do not have water conservancy boards. The creation of new water conservancy boards may face Initiative 695 difficulties. 4) Without this bill, moving forward with a project such as the one proposed in the Cle Elum area that will need water transfers is in doubt. 5) Voluntary dedications of water to instream flows should not be prohibited, particularly where the water would be left instream in the tributaries and used further downstream. 6) The bill is acceptable only if additional staff are provided in the operating budget for this work and current rights and the public interest are protected in transfers.

**Testimony Against:** (Substitute bill): 1) The bill is an improvement over proposals to exact water from those who wish to transfer their rights, but use of water conservancy boards is the best way to do transfers. Do not shift the focus away from using these boards. 2) Mandatory "adds" or dedications to instream flows should not be allowed. 3) Posting notices on the Internet may be helpful in some urban areas, but is not particularly useful elsewhere. Comments should not be accepted from the web. There should not be differing comment periods for applications for new permits and for transfers. 4) The "public interest" test does not apply to transfers of surface water now and should not apply; perhaps a "no detriment" test would be appropriate. 5) Without additional funding, there will be one application line moving, not two. The bill should not slow down the processing of applications for new permits.

**Testified:** (In support) (As passed by the Senate): Senator Fraser, prime sponsor; Bill Clark and Fredrick Slough, Washington Realtors Association; Steve Gano, TrendWest Resorts; and Doug Levy, cities of Everett and Kent.

(Commented) (As passed by the Senate): Bill Garvin, Columbia/Snake River Irrigators' Association; Linda Johnson, Washington State Farm Bureau; Kathleen Collins, Washington Water Policy Alliance; and Tony Meinhardt, Washington Association of Sewer and Water Districts.