

HOUSE BILL REPORT

HB 2185

As Reported By House Committee On:
Agriculture & Ecology

Title: An act relating to water rights.

Brief Description: Changing provisions relating to water rights.

Sponsors: Representatives Linville, G. Chandler and Grant.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/22/99, 3/2/99 [DPS].

Brief Summary of Substitute Bill

- Identifies the inchoate portion of certain certificated water rights of public water systems, requires the use of such an inchoate right to be consistent with adopted comprehensive plans, and establishes mitigation and monitoring requirements for transferring inchoate rights where certain fish habitat would be adversely affected.
- Requires Department of Health (DOH) to adopt conservation and efficiency standards and safeguards for water distribution and identifies the circumstances under which the standards apply.
- Allows interties to be used to acquire water, no longer prohibits interties from including the development of new sources of supply to meet future demands, and prohibits an intertie from being used to deliver a primary or secondary supply of water on a temporary basis.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Anderson; B. Chandler; Delvin; Fortunato; Grant; Reardon; Schoesler; Stensen; Sump and Wood.

Minority Report: Without recommendation. Signed by 1 member: Representative Koster, Republican Vice Chair.

Staff: Kenneth Hirst (786-7105).

Background:

In 1997, the state supreme court required that an irrigation district's water right be quantified in an adjudication proceeding based on beneficial use and not on system capacity. In a 1998 decision, the court came to a similar conclusion regarding the extent of a water right held by a private developer. The court declared in that decision that it declined to address issues concerning municipal water suppliers in the context of the 1998 case. Nonetheless, the court followed this declaration with a discussion of the possible effect of a gubernatorial veto of a bill regarding water rights for municipal water supplies.

A water right is appurtenant to the land or place that the right is used. However, the surface and ground water codes allow the right to be changed, transferred, or amended to change the place of use, the point of diversion or withdrawal, or purpose of use. These changes, transfers, and amendments to existing water rights are often referred to collectively as "transfers." Such a transfer requires the approval of the Department of Ecology (DOE) and must be done without detriment or injury to existing rights. A right transferred in this manner retains the date of priority (seniority) of the existing right.

Summary of Substitute Bill:

If a water right certificate was issued by the DOE to a public water system and, at the time the certificate was issued, the amount of water listed on the certificate for diversion or withdrawal under the certificate included both amounts beneficially used by that time and amounts not yet beneficially used, the water right is for the total of both amounts. Any amounts not yet beneficially used under such an "inchoate" portion of the right remain available to the water system for further development and for transfer for further development. The place of use for such a certificated right is the place of use listed on the certificate or the place of use identified in the latest water system plan approved by the DOH, whichever provides the larger service area.

The beneficial use of an inchoate right must be consistent with the comprehensive land use plan or other comprehensive plan for the area in which the use takes place. If a part of the inchoate portion of the right is to be transferred, the water system and the DOE must study the effects on habitat for fish stocks listed or proposed for listing under the federal Endangered Species Act or as critical or depressed in the state's salmon and steelhead inventory. If the transfer would adversely affect the habitat but the water

system wishes to proceed with the transfer, the system must develop a mitigation and monitoring plan. The mitigation must be conducted concurrently with the transfer.

The DOH must adopt conservation and efficiency standards and safeguards for the transmission of water to and the distribution of water by a public water system with at least 1,000 service connections that is made through a new intertie. These standards also apply to any transfer of a water right to a new place of use for use by a public water system with at least 1,000 service connections. The DOE may not approve any transfer of water by a public water system to a new place of use and for use by a public water system unless the distribution standards in the receiving place are as stringent as those in the sending system.

Interties may be used to acquire water, not just exchange or deliver water, and they are no longer expressly prohibited from including the development of new sources of supply to meet future demands. An intertie cannot be used to deliver a primary or secondary supply of water to a receiving system on a temporary basis. This prohibition applies unless the terms of the intertie agreement specify the source of the water that will be used to replace the temporarily delivered water and provide that replacement water will be available for delivery before delivery under the agreement is terminated. If such a supply of water is currently delivered on a temporary basis and the intertie agreement does not contain such a provision for replacement water, the delivery of the water cannot be terminated until the agreement is modified to establish these provisions and replacement water is available for delivery to or use by the receiving system.

Substitute Bill Compared to Original Bill:

The substitute bill acknowledges inchoate portions of water rights only for certain rights of public water systems, not other water rights as in the original bill, quantifies these rights differently than the original bill, alters the conditions that apply to the use of such a water right, alters the description of the place of use of such a right, and alters certain transfer requirements and the policies that apply to approving transfers. Provided by the substitute bill are the provisions: requiring the beneficial use of an inchoate right to be consistent with comprehensive plans; requiring mitigation for certain habitat effects; requiring the DOH to adopt standards and safeguards for certain distributions of water; allowing interties to be used to acquire water and no longer prohibiting them from including the development of new sources of supply to meet future demands; and prohibiting an intertie from being used to deliver a primary or secondary supply of water to a receiving system on a temporary basis. Deleted by the substitute bill are the provisions of the original bill requiring portions of inchoate rights to be transferred to the state trust water right system when state funding for efficiency measures is used.

Appropriation: None.

Fiscal Note: (For substitute bill) Requested on March 2, 1999.

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

Testimony For: (Original Bill) (1) Mitigation requirements are appropriately applied only to systems with at least 1,000 service connections. The smaller systems do not have much in the way of inchoate rights and have few resources for this type of study. (2) The bill reflects the extent of inchoate rights that may be viewed as existing under current law. (3) Please add a regional, common place of use that would allow, once fish requirements were met, the free movement of water supplies from public water systems.

Testimony Against: (Original Bill): (1) The key to balancing water for fish recovery and for growth is how the inchoate rights are treated. We can provide a structure for balancing those needs now, or we can give the rights to the public water systems entirely and have the courts respond to fish recovery needs. (2) Conservation standards are applied to the distribution of water, not its use. Mitigation is studied after the use and does not have to be implemented. (3) Mitigation and use should be simultaneous. Inchoate rights currently provide stream flows for fish. There should be more accountability for the use of the inchoate rights. (4) If use is expanded through conservation, one cannot assume the use will not impair other rights unless there is no change in the consumptive use under the right. (5) Please do not create an "inchoate" right category beyond those represented by undeveloped parts of water right permits and those represented by some certificated water system rights. (6) Two major water and salmon bills were enacted last year. These other processes should be completed before new ones are created. (7) Do not spend a lot of money without securing results. Do not give up anything just because of a federal threat; you may give up more than the federal government would try to secure on its own. (8) The bill does not address the problems faced by rural water systems. (9) The dedication of rights to the trust system would provide a disincentive to a system's securing financial assistance to conserve water. (10) Systems should not have to implement all conservation measures for their distribution systems.

Testified: (In favor, original bill) Dick Little, city of Bellingham.

(In favor in concept, original bill) Doug Levy, city of Everett.

(Concerns, original bill) Kathleen Collins, Washington Water Policy Alliance; John Kounts, Washington Public Utility District Association; and Sarah Mack, Arrowleaf.

(Opposed, original bill) Tom Fitzsimmons, Department of Ecology; Judy Turpin, Washington Environmental Council; Steve Wehrly, Muckleshoot Tribe; Karla Fullerton, Washington Cattlemen's Association; and Dick Ducharme, Yakima Growers and Shippers Association, Wenatchee Valley Traffic Association, and Building Industry Association

of Washington.