

# HOUSE BILL REPORT

## HB 2187

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**As Reported By House Committee On:**  
Agriculture & Ecology

**Title:** An act relating to water rights for instream uses.

**Brief Description:** Changing water rights for instream uses.

**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**

- Allows any person or entity to acquire a water right for instream use through the transfer, change, or amendment of an existing right.
- Exempts a water right held for instream use from relinquishment-for-nonuse requirements.

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### HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives G. Chandler, Republican Co-Chair; Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Koster, Republican Vice Chair; Anderson; B. Chandler; Delvin; Fortunato; Grant; Reardon; Schoesler; Stensen; Sump and Wood.

**Staff:** Kenneth Hirst (786-7105).

**Background:**

Minimum instream flows and reservations of water that have been set by rule by the Department of Ecology (DOE) constitute appropriations under the water code. The priority (seniority) date of an instream water right set by rule is the date it was established by rule.

A water right is appurtenant to the land or place 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 in the right, often referred to as transfers, require the approval of the DOE and must be done without detriment or injury to existing rights. A right transferred in this manner retains the priority date of the existing right. A right may also be transferred to the state for management by the DOE as a trust water right. Among the uses expressly authorized for such trust water rights are instream uses.

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**Summary of Substitute Bill:**

A water right for an instream use may be established through the approval of a transfer, change, or amendment of an existing water right under the state's water transfer laws. A water right established for instream use in this manner may expressly be held by any person or entity. A water right held for instream use is exempt from the relinquishment-for-nonuse provisions of water law.

If a water right acquired by the state for the state's trust water right systems is expressly conditioned to be instream use, it must be managed in that manner. A water right conveyed to the state as a gift must be managed for public purposes to ensure that the gift qualifies as a deduction for federal income tax purposes for the person who gave it.

**Substitute Bill Compared to Original Bill:** The substitute bill removes a reference in the original bill to instream flows being set by reservation under state law.

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**Appropriation:** None.

**Fiscal Note:** Requested March 3, 1999.

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

**Testimony For:** (Original bill) This is much the same as an element of the Governor's bill.

**Testimony Against:** (Original bill) Instream flows should be held by the state, not private individuals, and these flows should not be treated as appropriative rights. The bill should not refer to instream flows being set by reservation. Perhaps privately held instream flows should not be free from relinquishment requirements forever.

**Testified:** (In favor, original bill) Tom Fitzsimmons, Department of Ecology; and Judy Turpin, Washington Environmental Council.

(Opposed, original bill) Karla Fullerton, Washington Cattlemen's Association; and Kathleen Collins, Washington Water Policy Alliance.