

SENATE BILL REPORT

SB 5479

As of February 4, 1999

Title: An act relating to water resource transfers.

Brief Description: Affecting water transfer provisions.

Sponsors: Senators Fraser and Spanel.

Brief History:

Committee Activity: Environmental Quality & Water Resources: 2/5/99.

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY & WATER RESOURCES

Staff: Genevieve Pisarski (786-7488)

Background: A perfected water right is appurtenant to the land which it benefits and is conveyed with the land. The water right itself can be transferred to another parcel of land or place of use, if the water right is not enlarged as a result, and, if there is no impairment of other existing water rights. A water right can also have its point of diversion and purpose of use changed, with the same limitations. To be valid, all such actions must be approved by the Department of Ecology and be in the public interest.

In determining whether "existing rights" are impaired, it is necessary to consider senior and junior rights and permit applications, as well as stream flows. Impairment can result from reduced return flow or, in the case of groundwater, reduced capacity of the aquifer.

Only the amount of water that has been beneficially used, which may be less than the amount indicated on the water right certificate or permit, can be transferred. In evaluating a transfer application, the state may find that a right has been relinquished because of nonuse.

Summary of Bill: Change in season of use is authorized. Change in source of water from surface to ground and from ground to surface is authorized if there is direct hydraulic continuity, no enlargement of the right, and no impairment of existing rights including stream flows. There is no change of priority date, but the date may be subordinated if impairment of other rights is found within five years. Approval is not required for change of use to adjacent land if there is no change of ownership and no increase in total land, but notice to the Department of Ecology is required. Expedited approval is authorized for change in point of diversion in response to change in surface water level.

Mitigation for the effects of transfer is authorized and includes compensation, substitution, conditioning, or other means. Effects must be fully mitigated.

Regional water bulletin boards to facilitate voluntary transfers may be established by local governments and others. Transfer of reclaimed water is authorized and is in the public interest if it does not impair existing rights, including stream flows.

Public comment on decisions regarding changes and transfers is authorized. Applications for change and transfer receive priority and may be processed independently of applications for new rights in the same basin. Decisions on applications must be made within 60 days for a single season interval, within 90 days otherwise, and later than 180 days only in exceptional circumstances. Costs of regulatory review by the Department of Ecology may be recovered under voluntary agreements and are deposited to a water transfers account.

If the amount of water that is consumed does not increase, there is a rebuttable presumption of no impairment by a change or transfer. Consumption for irrigation may be determined by using the state of Washington Irrigation Guide. For temporary transfers of less than two years, prima facie evidence of no impairment is required. Offer, negotiation, agreement, and application to transfer are not evidence of waste or nonuse. Temporary transfer of water will not result in relinquishment if the transferee puts it to beneficial use.

The seller of land to which a water right is appurtenant must provide evidence of the right to the buyer and notify the Department of Ecology. The department must maintain a water transfer registry and periodically file summaries of relevant information with the superior court for basins in which a general adjudication decree has been entered.

Appropriation: None.

Fiscal Note: Requested on January 26, 1999.

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