

# SENATE BILL REPORT

## SB 5692

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As of February 11, 2009

**Title:** An act relating to sufficient cause for the nonuse of water.

**Brief Description:** Regarding sufficient cause for the nonuse of water.

**Sponsors:** Senators Honeyford, Hatfield, Holmquist, Morton and Delvin.

**Brief History:**

**Committee Activity:** Environment, Water & Energy: 2/10/09.

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Staff:** Karen Epps (786-7424)

**Background:** Washington water law is based on the prior appropriation doctrine. The doctrine known as "first in time is first in right" creates a priority system based on the date of use or intent to use water. In times of water shortage, more senior water rights may be exercised to the fullest extent, while use of water under more junior rights may be reduced or prohibited.

Under the forfeiture statute, if persons abandon or voluntarily fail to beneficially use all or any part of their water right for five successive years without sufficient cause, the right or portion unused reverts to the state. The sufficient causes have been identified in statute and include causes such as drought, military service, legal proceedings, and crop rotation practices. Water right holders that can show a sufficient cause do not relinquish their right to water even if it has been more than five years without that water being put to beneficial use.

**Summary of Bill:** A water right change application is sufficient cause for nonuse of a water right. The Department of Ecology must not consider the time when a water right was pending a final determination on a change application when ascertaining whether relinquishment has occurred.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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

**Staff Summary of Public Testimony:** PRO: This bill will provide incentives for water conservation. This bill will encourage sharing of this resource. Relinquishment affects all aspects of water uses. These transfer or change applications can get very bogged down and take a long time. As such, it would be a matter of fairness to prevent water from being relinquished while the water right holder is waiting for the change or transfer application to be approved.

CON: Many folks believe the current water system is broken, but there needs to be a more balanced approach in order to fix it. Current law is adequate if it is enforced. These efforts to change relinquishment are made to allow for hoarding of water. There is concern that this makes a unilateral change.

OTHER: There could be situations in which water cannot be used while a change or transfer application is pending.

**Persons Testifying:** PRO: Jack Field, Washington Cattlemen's Association; John Stuhlmiller, Washington Farm Bureau; Kathleen Collins, Washington Water Policy Alliance.

CON: Mo McBroom, Washington Environmental Council; Darcy Nonemacher, American Rivers; Steve Robinson, Northwest Indian Fisheries Commission.

OTHER: Ken Slattery, Department of Ecology.