

HOUSE BILL REPORT

HB 1327

As Reported By House Committee On:

Agriculture & Ecology

Title: An act relating to water rights claim filing.

Brief Description: Reopening the water rights claim filing period.

Sponsors: Representatives Chandler, Kremen, Clements, McMorris, Mastin, Johnson, Chappell, Schoesler, Lisk, Cairnes, Boldt, L. Thomas, Thompson, Sheldon, Campbell, Mulliken and Mielke.

Brief History:

Committee Activity:

Agriculture & Ecology: 2/15/95, 2/16/95, 2/23/95 [DPS].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Chandler, Chairman; Koster, Vice Chairman; McMorris, Vice Chairman; Mastin, Ranking Minority Member; Chappell, Assistant Ranking Minority Member; Boldt; Clements; Delvin; R. Fisher; Honeyford; Johnson; Kremen; Poulsen; Regala; Rust and Schoesler.

Staff: Kenneth Hirst (786-7105).

Background:

Code and Pre-Code Rights. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water were to be established under a permit system. However, certain uses of groundwater not exceeding 5,000 gallons per day have been exempted from this permit requirement. The permit system is based on the prior appropriation doctrine that "first in time is first in right." Prior to these enactments, rights to water were obtained in a variety of ways and under a variety of water doctrines. These pre-code rights to surface water could be obtained by appropriation, prescription, or by virtue of riparian land ownership. The doctrine in effect in this state prior to the adoption of the groundwater code in 1945 was the reasonable use and correlative rights doctrine. It is similar to the riparian doctrine for surface water rights in that it is based on land ownership.

Registration Required. With the enactment of legislation in 1967, the state required persons with claims of rights to the use of water based on something other than a water right permit or certificate to register the claims with the Department of Ecology. In general, claims had to be filed by June 30, 1974. However, the filing period was reopened on a limited basis in 1979 and again in 1985. A person who failed to file a statement of claim as required is to be deemed to have waived and relinquished the right.

Summary of Substitute Bill: A new period for filing statements of claim for water rights is established. The period begins on September 1, 1995, and ends at midnight on June 30, 1996. This reopening of the filing period is not to impair existing rights and a claim filed under it is subordinate to other rights. The filing period does not apply to groundwater rights which may be obtained without a permit under current law.

The Department of Ecology must publish a notice regarding the new filing period at least once each week during the month of August, 1995, and at least once each month during the filing period. The department must also prepare, make available to the public, and distribute to the media information describing the types of rights for which claims must be filed, the effect of filing, the effect of not filing, and other information regarding filings and statements of claim.

Amendments to statements of claims that are already in the claims registry may be submitted to correct errors in the statements. A claimant must attest that the amendment does not constitute an expansion of the right for which the original statement of claim was intended.

During the period beginning March 1, 1994, and ending with the close of the new filing period, neither the department nor the Pollution Control Hearings Board may determine or find that relinquishment of a right has occurred as a result of a person's failure to file a claim. If such a determination or finding has been issued after March 1, 1994, but before the effective date of the bill, the determination or finding is void and the remedy for the person against whom it was made is to file a new claim or an amendment to a previously registered claim.

The department must ensure that its employees are readily available for inquiries regarding statements of claim and that all of the information it has at its disposal is available to the person making the inquiry. Staff must be dedicated to these duties in each of the regional offices and in the central office of the department. The department must provide water right records to requestors within 10 working days in certain circumstances.

Substitute Bill Compared to Original Bill: Added by the substitute bill are the provisions: exempting from the claims filing requirement groundwater rights which

may be secured without a water right permit under current law; permitting amendments to previously filed statements of claim to correct errors; prohibiting, during a specified period, the department and the Pollution Control Hearings Board from finding that relinquishment has occurred for failure to file; and requiring the department to provide water rights records to requestors within 10 days in certain circumstances.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (1) The announcements and information concerning the original water claim registration period were confusing to many people. Many did not know whether the requirements applied to them; some filed claims with the county instead of the state; and others thought the registration requirement applied only to the eastern part of the state. Reopening the filing period is appropriate. (2) The records held by the department at the time of the previous filing period were confusing. It was difficult to determine what was and what was not already a documented right. (3) The department should be required to provide potential filers access to water right records within 10 days.

Testimony Against: The bill is counterproductive to the watershed planning efforts being considered in other bills.

Testified: Mary Burke, Washington Cattlemen and Farm Bureau (pro); Tom McBride, Hollywood Farm (pro); and Dawn Vyvyen, Skagit Valley Cooperative and Northwest Indian Fisheries Council (con).