

SENATE BILL REPORT

ESHB 2735

As of February 23, 2000

Title: An act relating to clarifying "voluntarily fails" for water rights relinquishment purposes.

Brief Description: Clarifying "voluntarily fails" for water rights relinquishment purposes.

Sponsors: House Committee on Agriculture & Ecology (originally sponsored by Representatives B. Chandler, G. Chandler, Linville, Clements, Lisk and Sump).

Brief History:

Committee Activity: Environmental Quality & Water Resources: 2/24/2000.

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY & WATER RESOURCES

Staff: Genevieve Pisarski (786-7488)

Background: Under current law, any person who abandons or voluntarily fails, without sufficient cause, to beneficially use a water right for five successive years relinquishes the water right, and it reverts to the state.

Abandonment is a common law doctrine, and it requires both the intent to abandon and the actual nonuse of a water right, although long periods of nonuse raise a rebuttable presumption of intent to abandon.

Voluntary failure, without sufficient cause, to beneficially use a water right for five successive years is a standard established by the state's relinquishment statute. Circumstances that are considered sufficient cause are also established by the statute and include nonuse as a result of drought or other unavailability of water and of the operation of legal proceedings, among others. The state Supreme Court has construed the statutory provisions relating to sufficient cause narrowly.

Voluntary failure is not defined in the statute. Webster's Dictionary defines "voluntary" as being without compulsion, on purpose, or by choice.

Summary of Bill: "Voluntarily fails" means that nonuse of water occurs as a result of factors within the control of the water user. Nonuse is involuntary, when it is in response to factors such as weather patterns or the presence of water from a source not within the water user's control, as long as facilities consistent with the use of the full amount of the water right are maintained.

Appropriation: None.

Fiscal Note: Not requested.

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