

# SENATE BILL REPORT

## SB 6872

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As Reported By Senate Committee On:  
Environmental Quality & Water Resources, April 26, 2000

**Title:** An act relating to expediting the processing of pending applications relating to existing water rights by clarifying when pending applications for new water rights are not existing rights, allowing pending applications relating to existing water rights to be processed independently of pending applications for new water rights, allowing applications to be processed ahead of previously filed applications that have insufficient information, providing that processing of applications for new water rights is not to be stopped, requiring a report on the processing of water rights applications, and creating an existing water rights account.

**Brief Description:** Expediting the processing of pending applications relating to existing water rights.

**Sponsors:** Senators Fraser, Morton, Jacobsen and Swecker.

**Brief History:**

**Committee Activity:** Environmental Quality & Water Resources: 4/25/2000, 4/26/2000 [DPS, DNPS].

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### SENATE COMMITTEE ON ENVIRONMENTAL QUALITY & WATER RESOURCES

**Majority Report:** That Substitute Senate Bill No. 6872 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chair; Eide, Vice Chair; Jacobsen, McAuliffe and Swecker.

**Minority Report:** Do not pass substitute.

Signed by Senators Honeyford and Morton.

**Staff:** Genevieve Pisarski (786-7488)

**Background:** Because water rights are use rights granted by the state, changes or transfers of water rights require the approval of the state. This authority is delegated to the Department of Ecology. Authority to consider and conditionally approve transfers is also delegated to local water conservancy boards.

According to the prior appropriation doctrine of "first in time, first in right" in western water law, the access to available water that a water right confers is based on its relative priority, which is determined by the date of the original application. According to recent court decisions, applications for changes or transfers of existing water rights, as well as applications for new water rights, for the same source of supply must, therefore, all be processed in order of the date of filing. The order of processing can be changed, only if criteria for priority processing are adopted by rule. Approval of applications for changes or transfers of existing water rights must, however, consider the effect that they would have on pending applications for new water rights.

**Summary of Substitute Bill:** Applications relating to existing water rights can be processed without regarding applications for new water rights as existing rights. Within the same source of supply, applications relating to existing water rights can be processed independently of applications for new water rights, without regard to date of filing. Applications may be processed ahead of previously filed applications that have insufficient information. Notice must be provided to the applicant for the previously filed application, explaining what information is not available and why and that the processing of the next application in order of filing will begin. The previously filed application will not lose its priority date. Processing applications relating to existing water rights must not stop the processing of applications for new water rights. Twice each year for three years, the Department of Ecology will report to the Legislature on the applications that it has processed and is scheduled to process, including applications filed with water conservancy boards, specifying which applications receive priority and why, and noting which applications involve Family Farm Act water rights. An existing water rights account is created for processing applications relating to existing water rights in order of filing. An appropriation of \$1.1 million is made.

**Substitute Bill Compared to Original Bill:** The following provisions are added: Notice must be provided, when information for a decision on a previously filed application is not available, explaining what information is not available and why and that the processing of the next application in order of filing will begin. The previously filed application will not lose its priority date. An appropriation of \$1.1 million is made. The department's report on the processing of water rights applications will include applications filed with water conservancy boards, specify which applications receive priority and why, and note which applications involve Family Farm Act water rights.

**Appropriation:** \$1.1 million.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** This bill meets the water needs of both people and fish by expediting decisions on water rights applications that have been waiting for a long time throughout the state and by also allowing immediate decisions in critical locations like the Methow, in order to place water instream and allow irrigation to continue this season. This is a positive step, even though other major water policy issues remain. The funding and policy provisions will allow almost twice as many applications to be processed next year as last year. Concerns that were created by the House amendment to SB 6525 are taken care of by this bill. It is appropriately neutral regarding water conservancy boards.

**Testimony Against:** The concept is good, but the bill is vague and difficult to understand. It does not guarantee when applications will be processed and still leaves Ecology too much discretion over processing, including requiring applicants to give up water. It should include provisions to eliminate any uncertainty over the authority of water conservancy boards and to allow Family Farm Act water rights to be changed to other uses. It should establish a pilot project, instead, that will focus on the greatest need, applications that have waited the longest.

**Testified:** Rick Nelson, WA Cattlemen's (con); Bob Mack, Tacoma (pro); John Kounts, PUD Assn. (pro); Dave Williams, Assn. WA Cities (pro); Dave Arbaugh, Kitsap PUD (neutral); Senator Bob Morton; B. Clarke (con); Curt Smitch, Governor's Office (pro); Tom Fitzsimmons, Ecology (pro); Dick Ducharme, Yakima Growers and Shippers, BIAW (con); Jim Halstrom, WA State Horticultural Assn (con); Bill Garvin, Columbia Snake River Irrigation Assn. (con); Josh Baldi, WEC (pro).