

SENATE BILL REPORT

SB 5199

As of February 4, 2013

Title: An act relating to de facto changes in water rights for irrigation purposes that involved conversion to more efficient irrigation technologies.

Brief Description: Concerning de facto changes in water rights for irrigation purposes that involved conversion to more efficient irrigation technologies.

Sponsors: Senators Ericksen and Holmquist Newbry.

Brief History:

Committee Activity: Agriculture, Water & Rural Economic Development: 1/29/13.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Staff: Bob Lee (786-7404)

Background: A water right is appurtenant to the land on which it is used. Generally, water rights specify a place of use, purpose of use, and a point of diversion.

Water right transfer laws were first enacted in 1917 and allowed for a process for requesting a change in place of use, purpose of use, or point of diversion, subject to approval of the designated agency. A transferred water right retains its original priority date.

Prior to 1997, the law allowed a water right to be transferred to another use if such change could be made without detriment or injury to existing rights. Generally, a water right to irrigate land includes a description of the land to be irrigated. A change in or expansion of the area requires approval of the Department of Ecology (Ecology).

In 1997, the statute was amended to allow a change in the place of use, point of diversion, and/or purpose of use to enable irrigation of additional acreage or the addition of new uses if such change results in no increase in the annual consumptive quantity of water used. Annual consumptive quantity was defined as the estimated annual amount of water diverted, reduced by the estimated annual amount of return flow, averaged over the most recent five-year period of continuous use.

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.

In 2001, this provision was modified to base the calculation on the two years of greatest use within the most recent five-year period of continuous use.

Under the general water right relinquishment statute enacted in 1967, if all or a portion of a water right is not beneficially used for a period of five consecutive years, the unused portion is relinquished to the state and becomes available for appropriation. There are a number of types of water rights that are exempt from relinquishment provisions.

Summary of Bill: An alternative process is established for determining the annual consumptive quantity that qualifying persons may follow.

An application for a change in place of use, purpose of use, or point of diversion must be reviewed by Ecology based on the requirements of the water right transfer law in existence at the time the change of use occurred, if the following conditions are met:

- the applicant implemented the requested change prior to submitting the change application to the Ecology;
- the applicant converted to more efficient micro-irrigation technology during the same time period that the requested change in use was implemented; and
- the applicant has beneficially used the water right for irrigation purposes using micro-irrigation technology since implementing the change of use.

Persons who apply under this provision are required to provide the following information:

- the date on which the actual changes in water use occurred;
- the nature and extent of the changes including any improvements in water-use efficiency or reductions in direct impact on instream resources;
- water use both before and after the de facto changes; and
- the points of diversion or withdrawal and place of use both before and after the de facto change occurred.

The applicant may submit evidence relating to crop production, irrigation facilities, metering records, or other data acceptable to Ecology.

In determining the amount of water diverted and withdrawn, and assessing the quantity of water actually applied to beneficial use, the applicant may submit and Ecology must consider information related to the amount of land physically contacted by irrigation water, the type of irrigation, row spacing, and other variables.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: None

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

Staff Summary of Public Testimony: PRO: The bill is about preserving jobs and maintaining the raspberry and blueberry industries. Farmers have been innovative and have switched to micro-irrigation technology so they could produce more berries with the same

water. The purpose of the bill is to get these people right in the eyes of the law as they did not submit a water right change application. The state should incentivize conservation rather than penalize it.

CON: There is concern about going back in time and how the impairment analysis is done. There has been concern about how spreading water may increase consumptive use.

OTHER: There is support for the policy to reward more efficient applications. Ecology has a de facto change policy in place that covers unauthorized changes. One concern is that changes will impair existing water right holders.

Persons Testifying: PRO: Senator Ericksen, prime sponsor; John Stuhlmiller, WA Farm Bureau; Bill Clarke, Whatcom Farm Friends.

CON: Bruce Wishart, Center for Environmental Law and Policy; Darcy Nonemacher, WA Environmental Council.

OTHER: Jack Field, WA Cattlemen's Assn.; Maia Bellon, Ecology; Dawn Vyvyan, Yakama Nation.