

# SENATE BILL REPORT

## E2SSB 5199

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As Passed Senate, February 5, 2014

**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:** Senate Committee on Ways & Means (originally sponsored by Senators Ericksen and Holmquist Newbry).

**Brief History:**

**Committee Activity:** Agriculture, Water & Rural Economic Development: 1/29/13, 2/21/13 [DPS-WM].

Ways & Means: 2/27/13, 3/01/13 [DP2S, DNP, w/oRec].

Passed Senate: 3/07/13, 39-7; 2/05/14, 38-8.

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### SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

**Majority Report:** That Substitute Senate Bill No. 5199 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Hatfield, Chair; Honeyford, Ranking Member; Brown, Eide, Hobbs, Schoesler and Shin.

**Staff:** Diane Smith (786-7410)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5199 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Hargrove, Ranking Member; Ranker, Assistant Ranking Member on the Operating Budget; Bailey, Becker, Braun, Dammeier, Hatfield, Hewitt, Padden, Parlette, Rivers, Schoesler and Tom.

**Minority Report:** Do not pass.

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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.*

Signed by Senators Nelson, Assistant Ranking Member; Conway, Hasegawa, Kohl-Welles and Murray.

**Minority Report:** That it be referred without recommendation.

Signed by Senator Keiser.

**Staff:** Sherry McNamara (786-7402)

**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.

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 Engrossed Second Substitute Bill:** Ecology must initiate a process to allow water right holders to change the current status of water rights that are currently being put to a different additional place of use or acreage than is indicated on the associated water right certificate, permit, or claim only if the following conditions are met:

- the water right is located in a county that has at least 6000 acres in raspberry production as of the effective date of this section;
- the water right holder has implemented a change from overhead irrigation technology to microirrigation technology;
- the water right holder has beneficially used the water right for irrigation purposes using microirrigation since implementing the change;
- the water right holder filed a water right change application or a new water right application for a different or additional place of use or acreage before the effective date of this section;

- the water right holder submits specific information to Ecology; and
- the conversion from overhead irrigation to microirrigation occurred before January 1, 2010.

If the information provided satisfies the requirements, Ecology must complete the analysis required and issue appropriate superseding water right documents, except that Ecology must use the time period prior to the implementation of the associated change to determine beneficial and consumptive use of the water right.

To participate in this process, the applicant must utilize the cost-reimbursement process.

**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 on Original Bill (Agriculture, Water & Rural Economic Development):** 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 (Agriculture, Water & Rural Economic Development):** 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.

**Staff Summary of Public Testimony on Substitute (Ways & Means):** PRO: In focusing on the economic and fiscal importance of this bill, 70 percent of the United States' red raspberry production comes from Whatcom County. This is very important to the state's economy and to counties, like Pacific County, that grow cranberries. This bill offers a

process to protect existing water rights. The fiscal costs of the bill to Ecology are minimal because the bill requires applicants to use cost reimbursement and cover all the costs of processing the application. The applications for this new process are currently pending in the system and are not a new workload.

**Persons Testifying (Ways & Means):** PRO: Bill Clarke, Whatcom Farm Friends.