

SENATE BILL REPORT

SB 6486

As of January 27, 2004

Title: An act relating to water rights for agricultural uses.

Brief Description: Concerning water rights for agricultural uses.

Sponsors: Senators Morton, Rasmussen, Honeyford, Swecker and Mulliken.

Brief History:

Committee Activity: Natural Resources, Energy & Water: 1/28/04.

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Staff: Evan Sheffels (786-7486)

Background: Certain aspects of a water right may be modified with the approval of the Department of Ecology (DOE) if the modification would not impair other existing water rights. Such an approved modification does not affect the priority date of the right. Alterations in water rights are referred to in statute as transfers, changes, and amendments.

The water code generally prohibits the withdrawal of public groundwater unless a permit has been granted, though several uses are exempt from groundwater permit requirements. Exempt uses include: "any withdrawal of public ground waters for stock watering purposes, watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, single or group domestic uses in an amount not exceeding 5,000 gallons a day, or for an industrial purpose in an amount not exceeding 5,000 gallons a day." Exempt uses are entitled to water rights equal to those with DOE issued permits. Owners of exempt wells may apply for a permit, but they are not required to do so. Courts have issued conflicting statutory interpretations regarding the applicability of the 5,000 gallons per day limit to exempt stock watering uses.

Summary of Bill: A general agricultural use category is created. Within this category, water right changes regarding type of crop or agricultural use not involving a change in season of use are allowed without applying for approval.

Within the agricultural use category changes in the season of use are allowed if DOE does not raise potential impairment concerns within 20 days of receiving written notice from the applicant. DOE can request a 15-day extension. Proposed changes from a seasonal period that is more critical for other water rights and stream flows to a period that is less critical are granted a rebuttable presumption of nonimpairment.

A nonappealable DOE determination of potential impairment precludes further proceeding under the agriculture use change provisions, though a water right holder may then apply for approval in accordance with other water right change provisions. DOE's earlier determination

of potential impairment may not result in any presumption of impairment in subsequent applications.

The annual quantity for exempt ground water uses subject to the 5,000 gallons per day limitation is calculated as the daily average of 5,000 gallons per day over a year.

An agricultural water permit process is created for any stock watering withdrawal begun before the act's effective date that exceeds the exempt use threshold of 5,000 gallons per day as a daily average over the period of a year. Such stock water use shall be deemed a water right in good standing and issued an agricultural water permit if documentary proof of water use is filed on time, the water used does not exceed the quantity listed in the agriculture water permit, and the water use remains within the agricultural use category.

The stock water account is created, and only stock water account funds may be used, to acquire, lease, or otherwise obtain water for stock watering purposes when certain economic or instream flow conditions exist. Such water acquisitions must provide for stock watering purposes, must help meet instream flow needs, and must be held in the state trust water rights program until the water right is leased for stock watering purposes.

Water rights acquired may be leased or sold to stock water users on a first-come, first-served basis. Revenue derived from water leases must be placed in the stock water account. DOE must seek federal and local funds to augment state funding for the account.

Appropriation: None.

Fiscal Note: Requested on January 26, 2004.

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