

# HOUSE BILL REPORT

## HB 1438

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**As Reported by House Committee On:**  
Agriculture & Natural Resources

**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:** Representatives Buys, Blake, Chandler, Warnick, Schmick and Fagan.

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 2/7/13, 2/21/13 [DPS].

**Brief Summary of Substitute Bill**

- Creates a new, temporary process for certain water users located in the Nooksack watershed who have transitioned to a more efficient irrigation technology to change their place of water use with the Department of Ecology.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Blake, Chair; Lytton, Vice Chair; MacEwen, Assistant Ranking Minority Member; Buys, Haigh, Hurst, Kretz, Orcutt, Pettigrew, Schmick, Stanford and Warnick.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Chandler, Ranking Minority Member; Dunshee and Van De Wege.

**Staff:** Jason Callahan (786-7117).

**Background:**

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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.*

Water right certificates include, in addition to the quantity of water that may be withdrawn, specification as to where the water can be used, where the water is sourced from, and the purpose for which the water will be used. A water right holder can apply to the Department of Ecology (Department) for a change in the place of use, point of diversion, or purpose of use of a water right. A change in any of these qualities is only allowed if the change is not detrimental to another water right held by a different water user.

A change in a water right that is processed to allow for the irrigation of additional acreage is only allowed if the change does not increase the water user's annual consumptive quantity of water. This factor, the annual consumptive quantity of water, is measured as the amount of water diverted under a water right and reduced by the estimated return flows that result from the water use. These numbers are averaged based on the highest two years of water usage in the five years preceding the applicable calculation.

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### **Summary of Substitute Bill:**

The Department is directed to initiate a process that enables water right holders located in the Nooksack watershed to change the place of use on their water right certificate without following the standard application and review process for such changes. To qualify for the process, the water right holder must be currently putting the associated water to a beneficial use in manner that is inconsistent with the place of use identified on the water right certificate. The change in the use of the water must have occurred prior to January 1, 2000, and must have been a change from overhead irrigation to a microirrigation technology.

A water right holder wishing to use the new process must have filed a water right change application with the Department prior to the effective date of the act and must provide to the Department information relating to the nature and extent of the change. The applicant must also pay applicable fees and, if requested by the Department, participate in a cost reimbursement process.

The Department must amend the water right holder's certificate to reflect the change in use if it finds that all of the requirements of the applicant, and for a change of use, have been satisfied. The changes to the water right certificate must indicate a beneficial use of water based on the time period five years prior to the effective date of the act. In making these determinations, the Department may rely on evidence such as crop receipts, seed receipts, historical photographs, and metering records.

The authority to conduct the specialized change application process expires on June 30, 2016.

### **Substitute Bill Compared to Original Bill:**

The original bill was applicable statewide, did not have an expiration date, and required the Department to apply laws relating to change applications as of the date they existed when the actual on-the-ground change was made.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 21, 2013.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) A change in irrigation techniques has led to increased conservation but has also led to threats on the total withdrawals allowed under existing water rights. These threats can lead to a reduction in crop production. The water rights holders making the change were acting on the advice of the Department.

(With concerns) The bill would be easier to support as a pilot project since there is a need to ensure that other water users are not being negatively impacted. The Department currently has a de facto changes policy that is designed to address just this issue. It is a bad precedent to provide amnesty for a water user who makes a change without following the proper legal steps.

(Opposed) It is very complicated to account for senior water right holders and instream flow effects when one goes back in time and changes a decision point. This increase in confusion is a negative outcome. The bill is too vague to be predictable and the Department needs more of a role in reviewing the changes. People should not be able to implement a change in water uses without asking permission first.

**Persons Testifying:** (In support) Representative Buys, prime sponsor; Bill Clarke, Washington Public Utilities District Association; Jeff Johnson, Spanaway Water Company; and Kathleen Collins, Washington Water Policy Alliance.

(With concerns) Maia Bellon, Department of Ecology; Jack Field, Washington Cattlemen's Association; Bruce Wishart, Center for Environmental Law & Policy and Sierra Club; and Miguel Perez-Gibson, Colville Tribes.

(Opposed) Darcy Nonemacher, Washington Environmental Council; Dawn Vyvyan, Yakama Nation and Puyallup Tribe; and Steve Robinson, Tulalip and Umatilla Tribes.

**Persons Signed In To Testify But Not Testifying:** None.