

SENATE BILL REPORT

SB 5622

As of February 6, 2023

Title: An act relating to the transfer of alternate water rights and water rights for municipal water supply purposes.

Brief Description: Concerning the transfer of alternate water rights and water rights for municipal water supply purposes.

Sponsors: Senator Torres.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 2/06/23.

Brief Summary of Bill

- Requires an amendment to a groundwater permit or certificate transferring an alternate water right to another water right holder to preserve the terms of the alternate water right.
- Provides that water rights for municipal supply purposes may be amended under the groundwater code to enable beneficial use within the original or another public water system.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Karen Epps (786-7424)

Background: Water Rights. Washington operates under a water right permit system. With certain exceptions, new rights to use surface or groundwater must be established according to the permit system. Exemptions include any withdrawal of public groundwater for stock watering purposes, for watering a lawn, or for a noncommercial garden less than one-half acre. Single or group domestic uses or industrial purposes not exceeding 5000 gallons a day

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are also exempt.

Ecology must consider a four-part test when deciding whether to issue a new water right, specifically whether:

- water is available;
- a beneficial use of water would be made;
- granting the right would impair existing rights; and
- the proposed use would detrimentally affect the public welfare.

If an application passes this test, Ecology issues a permit which establishes a timetable for constructing the infrastructure to access the water and for putting water to beneficial use. When the conditions of the permit are satisfied, Ecology issues a water right certificate.

Transfers and Changes. The water right may be transferred to other uses or places of use through a transfer or change of a surface water right or an amendment to a groundwater right. A substitute or supplementary well may also be provided at a new location under an amendment for a groundwater right. These transfers, changes, amendments, and substitute wells do not change the priority date of the original water right. However, they cannot be approved if they would interfere with existing rights, including junior rights.

Municipal Water Supply Purposes. The state water code provides a definition for the term municipal water supply purposes, and provides specific procedures relating to those water rights held for those purposes. The definition includes beneficial uses of water for residential purposes above a set number of service connections and for governmental or governmental proprietary purposes by local government. If a portion of the water in a water right is used beneficially for municipal water supply purposes, then any other beneficial use of the water that is generally associated with the municipal use is also considered a municipal water supply purpose. This includes any beneficial uses for commercial purposes, industrial purposes, irrigation of parks and open spaces, institutional purposes, landscaping, fire flow, water system maintenance and repair, or other purposes. A water right being used for municipal water supply purposes may also be considered to be beneficially used if it is used to benefit instream resources or is needed to implement an environmental obligation under a watershed plan, a habitat conservation plan, or a hydropower license.

Summary of Bill: Where an amendment to a permit or certificate of a groundwater right enables an alternate water right to be transferred in whole or in part and beneficially used by another water right holder, the amendment must preserve the terms of the alternate water right, including any aggregate limit on the amount of water withdrawn under the alternate water right and any related rights.

An alternate water right is a right that may be used either instead of or simultaneously with another identified water right or rights and where the aggregate amount of water used from all identified sources is not allowed to exceed a total authorized quantity.

Water rights for municipal supply purposes may be amended under the groundwater code to enable beneficial use within the original or another public water system.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: Cities cannot grow without water. This bill will allow irrigation districts with excess water to reallocate it to growing cities that have shortages. This situation is unique to Pasco and it should not be opened up to everyone. These allocations will be allowed on a case-by-case basis depending on where the water is critically needed. Alternative water rights are not a new concept and are intended to provide flexibility. Pasco is constantly looking for additional water rights to serve its exploding population growth. The bill would allow unused water rights from one municipal entity to be transferred to another municipal entity provided the use of those water rights remains for municipal purposes. The ability to transfer water rights is critical to the continued growth of cities. Pasco was in the process of purchasing unused water rights from Burbank Irrigation District, same groundwater body, but the transfer was denied. This bill would clarify these types of water right transfers for municipal purposes and meets the intent of the municipal water law. The bill provides a tool needed to meet the goals and aspirations of instream water and fish restoration and passage, while also continuing to irrigate lands.

CON: This bill will allow for the transfer of water rights between municipal users based on an administrative process that lacks clarity and independent review. The bill establishes another type of water right, an alternative water right, with only an amendment that is not properly reviewed by Ecology. The language does not define alternate water rights. The bill allows for the transfer of alternate water rights between municipal users based on an administrative amendment process which lacks clarity and independent review. The bill intends to transfer part of the water right that was never intended to stand independently, as alternate water rights were issued to be used in conjunction with existing water rights and only have an instantaneous quantity. The municipal water law was carefully crafted to create flexibility and certainty that utilities need by ensuring that the inchoate quantities not yet used would be protected, but also establishing sideboards. This bill makes two significant changes to how the municipal water law is being implemented, by changing how alternative water rights are defined and regulated to allow them to be transferred to other users and removing the sideboards from Ecology's review of municipal water rights at the time of change or transfer. This bill opens the door to previously impermissible transfers of paper water rights, the hydration of which could have negative, unmitigated impacts on fish and wildlife. This bill applies to more municipalities than Pasco and would open the door to

rehydrating alternative water rights that were meant for specific reasons in a way that would hamper and degrade instream flows. Rights that have no possible future use should not be allowed to be sold and the rights should revert back to the state.

Persons Testifying: PRO: Senator Nikki Torres, Prime Sponsor; Steve Worley, City of Pasco; Amanda McKinney, Yakima County; Kathleen Collins, Washington Water Policy Alliance.

CON: Maggie Franquemont, Center for Environmental Law & Policy; Jim Hendrick, Muckleshoot Tribe; Danielle Squeochs, Yakama Nation; Anne Savery, Tulalip Tribes; Megan Kernan, WDFW; Dave Christensen, Department of Ecology.

Persons Signed In To Testify But Not Testifying: No one.