

SENATE BILL REPORT

SB 5549

As of February 15, 2005

Title: An act relating to allocation of conserved water rights.

Brief Description: Providing for the allocation of conserved water rights.

Sponsors: Senators Hargrove and Poulsen.

Brief History:

Committee Activity: Water, Energy & Environment: 2/10/05.

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Staff: Margaret King (786-7416)

Background: In general, the state's water laws require a water right to be used or be relinquished. A person who abandons the right or voluntarily fails to beneficially use it or a part of it for any period of five successive years is to relinquish the right or portion not used unless the nonuse is exempt from relinquishment or is the result of certain statutorily listed "sufficient causes." Additional legislative exceptions to the general relinquishment rule are recognized for water conservation projects in irrigations districts, the state trust water program, limited allowance of spreading for certain conservation measures, and municipal water rights.

There has been additional public attention to increasing the efficiency in the use of water and many have advocated for an amendment to the basic water code to allow a conserving water right holder to retain a portion of the saved water and to allow the savings to be used on additional lands, to serve new water uses, for instream flows, or to market to others.

Summary of Bill: Allows any water right holder to submit an application for an allocation of conserved water from a conservation measure that the holder intends to implement or that has been implemented within the five years immediately proceeding the filing of the application. The conserved water in the application is exempt from the water codes relinquishment provisions. The priority date of an approved conservation allocation is the same as the original water right or one minute after such priority date, to be decided by the applicant.

The application for conserved water must be published and must include specifics regarding the conservation proposal, including the amount of water needed to supply existing rights after implementation of the conservation measures.

The general allocation of the conserved water is 50 percent to the applicant and 50 percent to the state to be managed as a trust water right. A different percentage of allocation may occur if the department and applicant agree and if the allocation is consistent with public interest in encouraging water conservation, in ensuring that necessary streamflows are maintained and achieved, and in managing public water resources to meet new water use demands. The

percentage of conserved water allocated to the state, however, cannot be less than the percentage that the public funds bear to the total funds provided to install or implement the conservation measures.

If the allocation is approved, a provisional certificate reflecting the change in the original water right will be issued that will be replaced upon completion of the conservation project with a separate new certificate to the applicant reflecting the changes in the water right and a certificate to the state reflecting the trust water right and the priority date.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For: This proposal is based on Oregon's bill and attempts to strike a middle ground and give incentive to conserve.

Testimony Against: It shouldn't require water right holder to give to the state 50 percent of conserved water and should allow conservation to go back 15 years. It improperly gives conserved water to individuals in a water district when it should go to the district. The "conserved water" may already be in the stream so it will injure junior users or allow additional withdrawals from the stream to detriment of fish. All of the conserved water should be allocated to instream use.

Concerns: There is conflict with existing provision of law regarding spreading and instream flow. The base water right is too broad and should be the same definition as that used in transfers. Allocation of conserved water should go back further than five years and should not have "public interest" criterion. All of the conserved water should be allocated for instream use.

Who Testified: PRO: Senator Hargrove, prime sponsor.

CON: Darryll Olsen, CSRIA; Mike Schwisow, WA Water Resources Assn.; Josh Baldi, WA Enviro Council; Dawn Vyvyan, Yakama Nation and Puyallup Tribe of Indians; Concerns: Joe Stohr, DOE; Carl Samuelson, WDFW; Joe Caldwell, Quinault Indian Nation; Kathleen Collins, WA Water Policy Alliance.