

28 (a) "Shareholder" means the owner of a share of stock, or other evidence of stock
29 ownership, that entitles the person to a proportionate share of water in a water company.

30 (b) "Water company" means any company, operating for profit or not for profit, in
31 which a shareholder has the right to receive a proportionate share, based on that shareholder's
32 ownership interest, of water delivered by the company.

33 (2) A shareholder who seeks to change the point of diversion, place of use, or purpose
34 of use of the shareholder's proportionate share of water in the water company shall submit a
35 request for the change, in writing, to the water company. This request shall include the
36 following information:

37 (a) the details of the requested change, which may include the point of diversion,
38 period of use, place, or nature of use;

39 (b) the quantity of water sought to be changed;

40 (c) the certificate number of the stock affected by the change;

41 (d) a description of the land proposed to be retired from irrigation pursuant to Section
42 73-3-3, if the proposed change in place or nature of use of the water involves a situation where
43 the water was previously used for irrigation;

44 (e) an agreement by the shareholder to continue to pay all applicable corporate
45 assessments on the share affected by the change; and

46 (f) any other information that the water company may reasonably need to evaluate the
47 requested change application.

48 (3) (a) A water company shall make a decision and provide written notice of that
49 decision on a shareholder's request for a change application within 120 days from receipt of the
50 request.

51 (b) Based on the facts and circumstances of each proposed change, a water company
52 may take the following action:

53 (i) approve the change request;

54 (ii) approve the change request with conditions; or

55 (iii) deny the change request.

56 (c) If the water company fails to respond to a shareholder's request for a change
57 application, pursuant to Subsection (3)(a), the failure to respond shall be considered to be a
58 denial of the request.

59 (d) The water company may not withhold approval if any potential damage, liability, or
60 impairment to the water company, or its shareholders, can be reasonably mitigated without cost
61 to the water company.

62 (e) A water company may consider the following factors in evaluating change
63 applications:

64 (i) any increased cost to the water company or its shareholders;

65 (ii) interference with the water company's ability to manage and distribute water for the
66 benefit of all shareholders;

67 (iii) whether the proposed change represents more water than the shareholder's pro rata
68 share of the water company's right;

69 (iv) impairment of either the quantity or quality of water delivered to other
70 shareholders under the existing water rights of the water company, including rights to carrier
71 water;

72 (v) whether the proposed change would cause a violation of any statute, ordinance,
73 regulation, or order of a court or governmental agency;

74 (vi) whether the shareholder has or can arrange for the beneficial use of water to be
75 retired from irrigation within the water company's service under the proposed change; or

76 (vii) the cumulative effects that the approval of the change application may have on
77 other shareholders or water company operations.

78 (4) The water company may require that all costs associated with the change
79 application, including costs of submitting proof, be paid by the shareholder.

80 (5) (a) The shareholder requesting the change must be current on all water company
81 assessments and agree to continue to pay all applicable future assessments, except that the
82 shareholder may choose to prepay any portion of the water company assessments attributable to
83 an existing debt of the water company.

84 (b) Other than prepaid assessments, the water company may require that the
85 shareholder continue to pay all applicable assessments.

86 (6) If the water company approves the requested change, with or without conditions,
87 the change application may be filed with the state engineer, and must:

88 (a) be signed on behalf of the water company; or

89 (b) be accompanied by written authorization from the water company assenting to the

90 change.

91 (7) (a) The state engineer may evaluate a change application authorized by a water
92 company under this section in the same manner and using the same criteria that he or she uses
93 to evaluate any other change application.

94 (b) Nothing in this section shall limit the authority of the state engineer in evaluating
95 and processing any change application.

96 (8) If an application authorized by a water company under this section is approved by
97 the state engineer, the shareholder may file requests for extensions of time to submit proof of
98 beneficial use under the change application without further permission of the water company.

99 (9) (a) Change applications approved under this section are subject to all conditions
100 imposed by the water company and the state engineer.

101 (b) If a shareholder fails to comply with all of the conditions imposed by the water
102 company, the water company may, after written notice to the shareholder and after allowing
103 reasonable time to remedy the failure, withdraw its approval of the application, and petition the
104 state engineer for an order canceling the change application.

105 (c) The water company may not revoke its approval of the change application or seek
106 an order canceling the application if the conditions are substantially satisfied.

107 (10) (a) The shareholder requesting the change shall have a cause of action against the
108 water company if the water company:

109 (i) unreasonably withholds approval of a requested change;

110 (ii) imposes unreasonable conditions in its approval; or

111 (iii) withdraws approval of a change application in a manner other than as provided in
112 Subsection (9).

113 (b) The action referred to in Subsection (10)(a) shall be referred to mediation by the
114 court under Title 78, Chapter 31b, Alternative Dispute Resolution Act, unless both parties
115 decline mediation.

116 (c) If mediation is declined, the prevailing party to the action shall be entitled to:

117 (i) costs and reasonable attorney fees[-]; and

118 (ii) damages.

Legislative Review Note

as of 1-21-05 6:32 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0229

Water Rights in Irrigation Companies

27-Jan-05

7:33 AM

State Impact

No fiscal impact.

Individual and Business Impact

This bill allows for the prevailing party to be entitled to damages.

Office of the Legislative Fiscal Analyst