



28 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

54 (i) approve the change request;

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

56 (iii) deny the change request.

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

59 denial of the request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 (b) be accompanied by written authorization from the water company assenting to the  
91 change.

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

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

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

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

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

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

108 (10) (a) The shareholder requesting the change shall have a cause of action, including  
109 an award of \$→ actual ←\$ damages incurred, against the water company if the water company:

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

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

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

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

117 (c) If mediation is declined, the prevailing party to the action shall be entitled to costs  
118 and reasonable attorney fees.

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**Legislative Review Note**

as of 11-28-05 6:42 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**

**Legislative Committee Note**

as of 12-21-05 2:53 PM

The Water Issues Task Force recommended this bill.