

SENATE BILL REPORT

SB 5949

As Reported By Senate Select Committee On:
Water Policy, February 27, 1995

Title: An act relating to water supply regulation.

Brief Description: Making changes to water supply regulation.

Sponsors: Senator Fraser.

Brief History:

Committee Activity: Water Policy: 2/27/95 [DPS]

SENATE COMMITTEE ON WATER POLICY

Majority Report: That Substitute Senate Bill No. 5949 be substituted therefor, and the substitute bill do pass.

Signed by Senators Drew, Fraser, Haugen, Hochstatter, Morton, Newhouse, Oke, Rasmussen, Spanel, Sutherland, Swecker and Winsley.

Staff: Gary Wilburn (786-7453)

Background: In 1993 the Washington Supreme Court held in Rettkowski v. State of Washington, commonly referred to as the "Sinking Creek" decision, that the Department of Ecology lacked statutory authority to regulate among water users unless a decree had been entered in a general stream adjudication for the water source that defined the rights and priorities of rights of the water users. Prior to the decision, Ecology had issued regulatory orders to require water users that were "junior" in priority to restrict water uses having an adverse impact upon senior water rights holders. Such regulatory orders are appealable to the Pollution Control Hearings Board. The existing statutes providing administrative regulatory authority to the department do not provide for notice and an opportunity to be heard by the parties to whom the regulatory order is to be directed.

The result of the Sinking Creek decision is that either the senior water rights claimants or the Department of Ecology must seek injunctive relief in superior court to restrict water uses by junior claimants where such use is impairing the rights of the more senior claimants. It has been suggested that such court actions are costly and time consuming, and the Legislature should address the court's decision by providing specific regulatory to Ecology.

Summary of Substitute Bill: The Department of Ecology may regulate as among water rights in the following situations: (1) where all the rights are permitted or certificated rights; (2) where an instream flow rule has been adopted; or (3) whether water is being withdrawn without any right or authority whatsoever. The department may regulate in such situations through regulatory orders or by seeking a court order.

In situations where one or more of the rights are not permitted or certificated, the department may bring an action seeking such relief as it deems necessary. If sought in state court, the action must be brought in the superior court where the water right diversions are located. Nothing in the legislation affects the general adjudication or relinquishment laws, or modified existing departmental powers except as provided in the legislation.

Substitute Bill Compared to Original Bill: The substitute bill replaces the original bill, which provided that in issuing water rights regulatory orders, the department must first make a tentative determination of the priority, quantity, place of use, and point of diversion of the right. In the original bill, such administrative orders required prior notice to the person to whom the order is proposed to be directed and an opportunity to show cause in writing why the order should not be issued. The order is not binding in a subsequent general adjudication but is prima facie evidence of the existence and conditions of the right.

Appropriation: None.

Fiscal Note: Available.

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