

SENATE BILL REPORT

SB 5386

As Reported By Senate Committee On:
Water, Energy & Environment, February 10, 2005

Title: An act relating to recognizing interests based upon federal laws in the management of state waters.

Brief Description: Recognizing interests based on federal laws in the management of state waters.

Sponsors: Senators Fraser, Rockefeller, Regala, Pridemore, Kohl-Welles, Keiser and Kline.

Brief History:

Committee Activity: Water, Energy & Environment: 2/2/05, 2/10/05 [DP, DNP].

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Majority Report: Do pass.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Pridemore and Regala.

Minority Report: Do not pass.

Signed by Senators Morton, Ranking Minority Member; Hewitt, Honeyford and Mulliken.

Staff: Margaret King (786-7416)

Background: The General Declaration of Fundamentals for Utilization and Management of Waters in the Water Resources Act of 1971 recognizes goals, standards, and policies for the uses, allocation and administration of waters among potential uses and users in the state. The current provision does not address federal reserved rights, treaty rights of Indian tribes, or requirements of federal law with respect to the waters of the state.

Summary of Bill: Federal reserved rights, rights secured to Indian tribes under federal treaties, and applicable requirements of federal law are included as interests the state considers under the General Declaration of Fundamentals section of the Water Resources Act of 1971.

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: Purpose of bill is to prevent litigation and economic harm by requiring the Department of Ecology to take into account federal reserved rights when acting on state water right and storage applications.

Testimony Against: The "water fundamentals" portion of the code focuses on classes of use-this is different. It shouldn't apply to Indian water rights that aren't quantified. To do what this bill requests need McCarran adjudication. The language is unclear and could be interpreted different ways in litigation. It would make sense if included the term "quantified." Does language create cause of action against DOE? How is the DOE to comply with the provision? Will it impact existing adjudications? How will it impact state certificated or adjudicated rights?

Who Testified: PRO: Senator Fraser, prime sponsor.

CON: John Stuhlmiller, WA Farm Bureau; Mark Charlton, WSFB; Kathleen Collins, Washington Water Policy Alliance; Kristen Sawin, AWB; Jack Field.