

HOUSE BILL REPORT

ESSB 6312

As Reported by House Committee On: Agriculture & Natural Resources

Title: An act relating to promoting job creation by ensuring access to domestic water for home construction.

Brief Description: Promoting job creation by ensuring access to domestic water for home construction.

Sponsors: Senate Committee on Agriculture, Water & Rural Economic Development (originally sponsored by Senators Haugen, Hobbs, Honeyford, Hatfield, Hargrove and Shin).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/17/12, 2/21/12 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by Committee)

- Entitles certain property owners located in a sub-basin on the Skagit River basin that has been closed to further groundwater withdraws by the Department of Ecology (Department) to withdraw up to 350 gallons each day for domestic uses as long as a mitigation plan is being implemented and funded.
- Prohibits the Department from requiring the metering of any existing wells that are not currently being metered as long as the water from the well is being put to domestic uses and no more than 5,000 gallons a day is being withdrawn.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 7 members: Representatives Blake, Chair; Stanford, Vice Chair; Dunshee, Finn, Lytton, Pettigrew and Van De Wege.

Minority Report: Do not pass. Signed by 6 members: Representatives Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Hinkle, Kretz and Orcutt.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Jason Callahan (786-7117).

Background:

Skagit River Basin Water Rules.

The Department of Ecology (Department) has adopted specific rules related to water withdraws in the Skagit River basin. These rules include a determination by the Department that water is not available in the Skagit River basin for year-round consumptive appropriation. The Department has set aside a limited amount of surface water for future out-of-stream uses in the Skagit River basin; however, with some exceptions, the basin will be closed to future appropriation once those set asides are allocated.

The Department has also limited groundwater withdraws in the Skagit River basin. An administrative determination has been made that the hydrology of the Skagit River basin is such that groundwater withdraws may impact surface water levels. Based on that determination, the Department requires an applicant for new groundwater withdraws, or a change or transfer for an existing right, in the Skagit River basin to show, through scientific studies and analysis, that the action will not cause impairment to the instream flows of the Skagit River.

Summary of Amended Bill:

Each property owner located in a sub-basin on the Skagit River basin that has been closed to further groundwater withdraws by the Department of Ecology (Department) is entitled to withdraw up to 350 gallons each day for domestic uses. This entitlement only exists if the property or the landowner:

- utilizes a septic system for wastewater management;
- cannot practicably be served by a public water purveyor;
- complies with all applicable county permits and limitations;
- can show that the water to be provided is reliable and safe;
- is located on a legal lot of record; and
- fulfills all applicable mitigation requirements.

Mitigation for the groundwater withdraws must be included in a plan that is approved by the Department. The mitigation plan must provide for no net loss of water to the Skagit River system. The landowner has the responsibility for developing and implementing the mitigation plan; however, counties and public utility districts may help fund both the development and implementation of the mitigation plans. The state, through the capital budget process, may also contribute funding for mitigation for any property owners who have already filed a building permit with the county.

For all watersheds (and not just the Skagit River basin), the Department is prohibited from requiring the metering of any existing well that are not currently being metered as long as the water from the wells is being put to domestic uses and no more than 5,000 gallons a day is being withdrawn.

Amended Bill Compared to Engrossed Substitute Bill:

The original bill prohibited the Department of Ecology (Department) from adopting rules applicable to the Skagit River basin that constrains any new groundwater withdrawals for certain domestic use to less than 350 gallons per day per dwelling unit, provided direction to the Department regarding how funds should be prioritized to offset the concerns raised by groundwater withdraws in rural areas, and amended the State Building Code to allow groundwater withdraws in the Skagit River Basin to satisfy the requirement for potable water supplies.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There are individuals in the Skagit Valley who invested a substantial amount of money in property on the assumption that homes could be built there. In the time since, the Department of Ecology has, through administrative action, made it so that those landowners cannot withdraw even a modest amount of groundwater for domestic uses. These landowners have no access to public water and plan to use septic systems so that most of the water used is returned to the aquifer. The closure of the Skagit River basin to groundwater withdraws has caused property values to crash without a corresponding reduction in mortgage payments. These properties are located on a narrow swath of land located between the mountains and the flood plains where the Growth Management Act has directed growth to occur.

Nobody is hurt by this bill, and in the end, the financial incentives and pumping of deep aquifer water to the surface will mean more water for everybody. Any impacts will be fully mitigated with a portion of the money that is currently used for planning and litigation. Historic divides over exempt wells need to be put aside and real solutions should be crafted so that there is a historic first step towards landowners being able to access de minimis amounts of groundwater. The state needs to be more proactive in its policies for accessing water. A few small wells are hardly the biggest problem facing the water resources of the Skagit River basin.

(With concerns) Any solution needs to balance instream and out-of-stream water needs. The reliance on groundwater near critical streams is a common but tough challenge when it comes to rural development. There should not be a choice made between development and fish. Any solution should address both development and fish and both have been balanced in other areas of the state. A successful solution will not look at a parcel-by-parcel approach but a wholesale watershed approach.

The current rules applicable to the Skagit River basin were designed to buy time while other solutions could be worked out. Perhaps that time has come.

(Opposed) Any decisions made for the Skagit River basin should apply only to that basin and not set a statewide precedence. Any solution should also not undo the existing multi-party agreement currently in place for water resources uses in the Skagit River basin and not end run the Growth Management Act planning process. The Legislature cannot legislate more water into existence, it can only take water from one group of users and give it to another. This bill is one-size-fits-all legislation when a local solution based on sound science is what is needed.

Tribal nations rely on the Skagit River and its tributaries for ceremonial and subsistence salmon harvests. An increase in groundwater withdraws will lead to less water in tributaries and less salmon to harvest. Any withdraws should be paired with viable mitigation measures. The public investments in salmon restoration will be meaningless if there is not enough water in the streams to support fish life.

Any jobs created by the withdraw of more groundwater in closed basins will only be taking the place of jobs that rely on a healthy environment and a strong natural resources base. Less salmon means less rural jobs.

The effect of just one 350-gallon well is unacceptable for a closed basin, but the cumulative impact of multiple wells is truly unsustainable for a finite resource like water. The mitigation must occur before any development begins and the uses of the water should be limited to inside uses.

Persons Testifying: (In support) Senator Haugen, prime sponsor; Bill Clarke, Washington Realtors; Glen Smith, Washington State Ground Water Association; Larry Saimons; Zach Barborinas, SunPeak Estates Homeowners Association; Jim Spane; Travis Stanton; Bob Stevens; and Will Honea and Gary Stoyka, Skagit County.

(With concerns) Ted Sturdevant, Department of Ecology; and Dave Maston, Muckleshoot Tribe.

(Opposed) Dawn Vyvyan, Yakama Nation and the Puyallup Tribe; Davor Gjurasic, Swinomish Tribe; Jim Peters, Northwest Indian Fisheries Commission; Jeff Dickison, Squaxin Island Tribe; Fred Buckenmeyer, City of Anacortes; Bruce Wishart, Center for Law and Environmental Policy and the Sierra Club; and Mo McBroom, Washington Environmental Council, American Rivers, and Trout Unlimited.

Persons Signed In To Testify But Not Testifying: None.