

SENATE BILL REPORT

ESSB 6312

As Passed Senate, February 13, 2012

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, Water & Rural Economic Development: 1/19/12, 2/02/12 [DPS].

Passed Senate: 2/13/12, 39-7.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6312 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hatfield, Chair; Shin, Vice Chair; Honeyford, Ranking Minority Member; Becker, Delvin, Haugen, Hobbs and Schoesler.

Staff: Bob Lee (786-7404)

Background: The Water Resources Act of 1971 provides authority to the Department of Ecology (DOE) to allocate available water resources among various uses, including instream flows for perennial rivers and streams and water to satisfy human domestic needs. The act provides that allocations are to be based upon receiving maximum net benefits to the state. The method of allocating water is determined by basin rules adopted by DOE. There are 62 different basins in the state, and some basin rules date back to the mid-1970s; in other basins, rules have not yet been adopted. The methodology for establishing instream flows have changed over time. Also, agency policies for determining whether ground water is in hydraulic continuity with surface waters has changed over time, particularly with regard to permit-exempt wells and when such uses are de minimus.

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.

Under the 1990 Growth Management Act (GMA), comprehensive plans and development regulations designate rural areas for light density home construction. Under GMA, state agencies were provided an opportunity to comment to counties prior to final adoption. The act also contains requirements that evidence of water availability be provided to the local government before building permits can be issued.

In a basin rule adopted by DOE in 2006 for the Skagit River, water right reservations were created to provide water for homes in areas not served by public water systems. The water right reservation in one sub-basin provides 350 gallons of water per day per home, but only allows 66 homes to be built in a 27.7 square mile area— an average of one home for each 270 acres. The total quantity of the water right reservation is 11,663 gallons per day for that sub-basin, or roughly the equivalent of the daily flow through one standard garden hose divided across the entire sub-basin. That rule assumes that homes utilize on-site septic systems and that much of the indoor water use component recharges the aquifer. Under the current rule, to construct any additional homes requires the home to be water-budget neutral. Because mechanisms haven't yet been established that make it readily feasible to meet the water-budget neutral requirement, further home construction has been halted. Similar water quotas exist in other sub-basins in the Skagit River Basin, and there is concern that the opportunity to construct more homes in other sub-basins will also be halted.

There exist a variety of environmental and habitat improvement and acquisition programs that are implemented by state, federal, and local governments. DOE receives funds to implement the water acquisition program that currently operates in a some eastern Washington basins. This program funds projects that protect and enhance instream flows.

Summary of Engrossed Substitute Bill: For purposes of the Water Resources Act of 1971, the term domestic water use means potable water used to satisfy the needs of a household, including water for drinking, bathing, sanitary purposes, cooking, laundering, lawn and non-commercial garden use, caring for household pets, and other incidental uses.

The provision that requires the agency to provide adequate water supplies to satisfy domestic needs is supplemented with a requirement that regulations adopted for the Skagit River Basin may not constrain groundwater usage per day per dwelling unit to less than 350 gallons per day if the home is not readily served by a public water system and utilize an on-site septic system.

DOE may list or quantify by water resource inventory area the environmental benefits that result from investments by federal, state, and local governments from tax-supported environmental, water use efficiency, and habitat programs. DOE is authorized to apply for funding from state and federal sources for projects and activities that enhance flow and habitat conditions in rivers and streams that address areas of concern including those that arise from the use of water authorized in rural areas of the Skagit River Basin.

Funding provided to the department's water acquisition program to offset impacts to stream flows including rural areas in the Skagit River Basin, must be used to protect, and where possible enhance, instream flows in rural areas by acquiring water rights, incentivizing water conservation, and low impact development practices, and promoting any other instream flow enhancement projects, including collection, retention, and release of rainwater; constructing

ponds, wetlands, and other water impoundments; and storm water infiltration. DOE must permanently dedicate water developed or acquired in the state trust water right program. Preference must be given to instream flow proposals in the Skagit River Basin.

With regard to the interrelationship of surface and ground waters, DOE is to:

- provide recognition for recharge of groundwaters by home septic systems for indoor water use; and
- provide recognition that there are widely varying degrees of potential impact to surface waters from groundwater withdrawals that are less than one-to-one and can vary depending on geology, porosity of underground formations, well depth, distance from surface water bodies, season of use, rainfall, and temperature.

In regard to issuance of building permits in the Skagit River Basin for single-family dwellings not readily served by an existing public water system that utilize septic systems, an applicant satisfies the requirement to show that water is legally available by submitting a signed declaration of intent to comply with the 350 gallon per day per dwelling limit. The local jurisdiction may still require proof that the water is physically available and meets drinking water standards.

The ability to withdraw water otherwise allowed under the current ground water permit exemption is not altered, limited, impaired, or amended.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: Because agricultural lands and industrial forest lands have been protected from urban encroachment, and because of the constrains on cities that are all located in the flood plain, there is not much place left to grow in Skagit County. The water restrictions in the rural areas have stopped growth there. People wanting to build are citizens like you and me. There are several homes ready to start construction that can't because state water restrictions prevent it. Water is a basic human right. In a basin that has plenty of water, it is hard to understand why people can't access it to build their homes. The argument is that small withdrawals will harm fish, but these fish are the only endangered species that you can buy in the grocery store. Bills are important and timely, since state population has increased by 350 percent from 1945 to 2010. It is important to provide water for human use, and access to water should be considered as a human right.

CON: The concern is about unintended consequences, particularly with intermittent streams and cumulative impacts. Concerns center on the 350 gallons. The legislation is overbroad and opens up other problems in areas outside the Skagit.

OTHER: Bills will start the conversation and are committed to finding a path forward.

Note: SB 6311, SB 6312 and SB 6313 were taken as a package.

Persons Testifying: PRO: Senator Haugen, prime sponsor; Paul Pearce, Josh Weiss, WA State Assn.of Counties; Bill Clark, WA Realtors Assn.; Glen Smith, WA State Groundwater Assn.; Art Castle, Building Industry Assn. of WA; Jim Halstrom, WA State Horticultural Assn.

CON: Bruce Wishart, Center for Environmental Policy, Sierra Club; Dave Mastin, Muckleshoot Tribe.

OTHER: Evan Sheffels, DOE; Dawn Vyvyan, Yakama Nation; Jack Field, WA Cattlemen's Assn.