

SENATE BILL REPORT

SB 6061

As of March 28, 1995

Title: An act relating to water.

Brief Description: Making comprehensive changes to water administration.

Sponsors: Senators Rasmussen, Morton and Haugen.

Brief History:

Committee Activity: Ways & Means: 3/21/95.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Susan Lucas (786-7711)

Background: Water Resource Management - General. With the adoption of the surface water code in 1971 and the groundwater code in 1945, new rights to the use of water were established under a permit system. However, certain uses of groundwater not exceeding 5,000 gallons per day have been exempt from this permit requirement. The permit system is based on the prior appropriation doctrine that "first in time is first in right." Other laws authorize the state to establish minimum flows and levels for streams and lakes. The Water Resources Act of 1971 as amended establishes a broad range of fundamentals for the utilization and management of the waters of the state. The permit system and the state's laws for managing water resources are administered by the Department of Ecology (DOE).

Current law requires that DOE, when reviewing a water permit application, must investigate what water is available and what impact the proposed use would have existing water rights and the public interest. DOE must make written findings of fact based on its investigation.

If DOE finds that there is water available, and no adverse impact on the public, it will issue a permit stating the amount of water to which the applicant is entitled and the uses for which the water may be utilized.

In some cases, water can be diverted or withdrawn, used, and then returned to its source or point of diversion. Termed as "nonconsumptive uses," examples of these uses include some aquacultural projects and other applications.

Funding for Water Resources Management. The fee schedule for water rights permitting was established in 1917. The existing fee schedule pays for about 2 percent of the cost of the water right permitting process incurred by DOE.

During the 1993 session, a Water Right Fee Task Force was created. It was given two major assignments: to recommend to the Legislature statutory changes to improve the efficiency of the water right permit process, and to develop a fee schedule whereby water right applicants pay 50 percent of the cost of the water right program.

Legislation containing the recommendations of the task force, including a fee schedule, was submitted to the 1994 Legislature but was not enacted.

Also in 1993, changes were made in the operating budget that reduced the funding for processing water right applications from \$3,750,000 in FY 94 to \$1,375,000 for FY 95. According to the proviso, the appropriation level for processing water right applications could be increased if legislation was enacted that generated revenue from fees that paid 50 percent of the combined cost of processing water right applications and water resources data management. The current level of general funds appropriation for these two components was \$2.4 million, and the target for fee revenue was about \$2.4 million also. When the fee legislation did not pass, DOE's staff assigned to processing water right applications was reduced by about two-thirds.

Water Resources Planning. The Water Resources Act directs DOE to develop a comprehensive state water resources program for making decisions on future water resource allocation and use. The act permits the department to develop the program in segments. Under the act, DOE has divided the state into 62 water resources inventory areas (WRIAs). The department has adopted water resource programs or instream resources protection programs for a number of the WRIAs.

The groundwater code permits DOE to designate and manage groundwater areas, sub-areas, or depth zones to prevent the overdraft of groundwaters. In 1985, legislation was enacted that permits groundwater management studies to be initiated locally and allows local governments to assume the lead agency role in developing local groundwater management programs.

Water Rights Adjudication. In 1993, the Washington Supreme Court held in Rettkowski v. State of Washington, commonly referred to as the "Sinking Creek" decision, that DOE 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 that 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 DOE 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 authority to Ecology.

Summary of Bill: The Washington Water Resources and Water Quality Board is created. Members are appointed by the Governor, with consent of the Senate. Two members reside in the east part of the state and two members reside in the west part of the state. One member represents the state at large. Members cannot be state officers or employees and must have experience in water-related issues. Members serve four-year terms, except two members appointed at the inception of the board serve two-year terms.

The board has the power to establish statewide water policy and guidelines regarding water resources, related water quality matters and water storage. The board may review any agency's proposed rules affecting water resources, water quality or water storage issues for inconsistencies with existing laws or rules.

The board has the authority to hire staff. Staff employed by the Departments of Health and Ecology must also provide staff support to the board. The board must submit a biennial report to the Governor and the Legislature that summarizes transactions and proceedings of the board and that contains other requested information.

The board guides the state's involvement in regional planning efforts, including establishing planning guidelines, approving planning petitions, approving plans, making grants and ensuring that state actions to aid in implementation are made on a timely basis.

Regional planning is initiated through filing a petition with the board. The petition must be signed by at least two local governments or at least 100 local landowners residing in the planning area. Regional planning groups may request that authority be delegated with respect to setting instream flow levels, hydraulic continuity, aquifer mining, exempt wells, transfers of water and other policies. If delegation of authority is granted, the planning group must adhere to the requirements listed below for approval of the draft final plan.

The board must review all petitions and must hold a public hearing on the petition. A decision on approval of the petition must be made within 120 days of the hearing and must be based on certain criteria. If the petition proposes development of a habitat conservation plan covering endangered species, the Governor must request that the appropriate federal agencies endorse development of the plan.

The planning group must develop a draft final plan that conforms to the board's requirements. The plan must be approved by a majority vote of the planning group before submission to the county legislative authorities. The county must hold at least two hearings on the draft final plan within 60 days of receiving the plan. The planning group must reconvene to consider public comments and make changes to the plan. The revised plan must also be passed by a majority vote of the planning group before resubmission to the county legislative authority. The county has 30 days to approve or reject the plan before submission to the board.

The board must hold a hearing on the plan within 60 days of approval by the county. The plan must be approved or returned to the planning group for change within 90 days of the public hearing. If the plan is returned, the planning group has the option of making recommended changes or withdrawing the plan from further consideration.

DOE is directed to establish by January 1, 1996, a streamlined general permit system for nonconsumptive, nonbypass uses, agricultural uses, and multi-unit residential uses of water. These uses are further defined.

The general permit system applies statewide, or in specific geographic areas, except in areas where DOE, in consultation with the affected county or counties, determines that insufficient water is available to accommodate additional water allocations.

DOE must determine within 60 days of the completion of the filing protest period whether an application is eligible for general permit processing. If DOE determines that an application is eligible, it must process the application within the next 60 days. If DOE determines that an application is not eligible, it must explain in writing the basis for its decision.

Fees for general permits are the same as those for ordinary permits under state law.

A well established under the less-than 5,000 gallons per-day exemption may provide water service for up to 12 housing units unless expressly prohibited by the appropriate local government. DOE shall require metering of these wells unless in certain situations it deems metering is not necessary. This provision expires after December 31, 1996.

Water master and Ecology director regulation of water diversions are based upon determinations of the various rights involved, based upon departmental record and investigation. In an appeal of a regulatory order to the Pollution Control Hearings Board, it is not a defense that the rights have not been confirmed in a general water rights adjudication.

Prior to an issuance of an order of regulation, the department notifies a person whose use of water will be regulated. The order is issued seven days after receipt of notice, unless the person can show cause in writing why the department's decision is in error.

A new fee schedule is established. The fee schedule contains fees sufficient to fund elimination of the water right backlog in about three years.

Statutory exemptions to payment of fees for processing water right permits and certificates for specific uses are repealed.

The date of priority of water rights established in the future is changed to the date that a completed application is submitted. The department develops by rule what is to constitute a completed application.

The department may require the applicant to provide information needed to support a water right application but such requirements must be directly related to the application under consideration.

A person may relocate the point of a groundwater or surface water diversion up to 1/4 mile as long as other water rights are not impaired and the water right holder provides at least 15 days advance notice to the department. Clarification is added regarding a change to the point of diversion to reduce possible impairment of other existing rights or harm to the fishery resource.

Once a holder of a water right completes an approved change or transfer, the holder must notify the department who then issues a superseding certificate that reflects the change.

The department is required to encourage the filing of consolidated water right applications that are under a single ownership and to provide forms for consolidated applications.

The department is provided authority to set aside unappropriated surface water through the adoption of a rule. The department may allocate up to 450 gallons per day from this water right reservation to persons making application for a water right through an expedited process. Informational materials are provided regarding risks of drinking untreated surface water.

The department establishes a register that identifies water right or change applications that are in excess of 3 cubic feet per second for each water resource inventory area in the state.

The department is directed to develop accountability measures to employ in the water right permitting program to assure that funds are being efficiently expended. A water rights program review task force is to review workload standards and targets for the permitting process. The task force remains in effect through June 30, 1999, and monitors the water right permit and data management programs and makes recommendations for funding levels and fee changes. By December 1, 1995, the task force must recommend the appropriate future funding sources for data management.

A new account is established in the State Treasury. The water escrow account receives a \$500,000 transfer by June 30, 1995, from the general fund. The funds are used for administration of water rights adjudications. The water escrow account retains its prorated share of interest.

Appropriation: \$500,000 is appropriated from the water escrow account to the Department of Ecology.

Fiscal Note: Requested on March 20, 1995.

Effective Date: Sections related to the water escrow account take effect immediately. Sections relating to regulation among water users, water permit fees and the appropriation take effect July 1, 1995. The remaining sections of the bill take effect 90 days after adjournment of session in which the bill is passed.

Testimony For: The funding structure for water rights permit processing is supported with half paid by fees and half paid by the general fund. The governance structure over water policy should be changed at the same time that fees are increased. It is important to ensure that the management of water policy and the basis for making decisions is addressed in any proposal. Regional water planning is essential for solving water resource problems. Funding should be provided in the budget. Regional planning should be controlled more at a local level. The Yakima adjudication process needs funding security, so dedication of funds is important. Data management and basin assessments are necessary to increase the efficiency of the permit process and should be funded in the budget.

Testimony Against: The bill does not contain a full fix for the "sinking creek" decision. The governance structure in the bill is not adequate. A separate agency for water resources is needed. A water agency can address the policy decisions which led to the backlog more effectively than the current structure. Regional planning should be controlled more completely at the local level. The need for a full-time board is questionable. A part-time board would be less expensive and would be able to accomplish what is required in the bill.

Testified: Senator Marilyn Rasmussen, prime sponsor (pro); Bill and Sharon Rosman, Sinking Creek (con); Enid Layes, Washington State Horticultural Association (con); Ray Schindler, Washington Association of Wheat Growers (con); Dan Coyne, Washington Dairy Federation (con); Bruce Wishart, Sierra Club; Dave Williams, Association of Washington Cities; Judy Turpin, Washington Environmental Council; Mike Schwisow, Washington State Water Resources (con); Tom Mortimer, Pierce County RWA; Betty Meyer, King County Surface Water Management Division (pro); Teresita Batayola, Seattle Water Department (pro); Dick Ducharme, Yakima Growers and Shippers (con).