

SENATE BILL REPORT

SB 6334

As Reported By Senate Committee On:
Ecology & Parks, February 1, 1996

Title: An act relating to water rights.

Brief Description: Changing water rights administration.

Sponsors: Senators Rasmussen, Swecker, Haugen, Fraser, Morton and Sutherland.

Brief History:

Committee Activity: Ecology & Parks: 1/22/96, 2/1/96 [DPS].

SENATE COMMITTEE ON ECOLOGY & PARKS

Majority Report: That Substitute Senate Bill No. 6334 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chair; Fairley, Vice Chair; McAuliffe, Spanel and Swecker.

Staff: Susan Ridgley (786-7444)

Background: The water right permitting process was first established in 1917. 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 efficiency of water right permit process, and to develop a fee schedule to pay for the cost of water rights permitting. Legislation containing the task force recommendations was submitted to both the 1994 and 1995 Legislatures, but was not enacted.

Summary of Substitute Bill: A number of provisions to increase the efficiency and effectiveness of permit processing are provided. Many of the requirements for permit applicants, the Department of Ecology and the Pollution Control Hearings Board (PCHB) are changed.

Applicants now must, among other things:

- (1) file a completed application, which is the date of priority of future water rights;
- (2) publish an expanded notice that provides for 30 days of comment by the public;
- (3) provide additional information directly relevant to the application under consideration to assist Ecology in its investigation; and
- (4) consolidate related right applications under a single ownership.

Ecology now must, among other things:

- (1) adopt rules about what is considered a "complete" application, including content and timelines;
- (2) establish protocols for what information must be provided by the applicants;
- (3) adopt forms to allow applicants to consolidate permits;
- (4) make available to the public a summary of the proposed decision on a permit applications, and consider comments received;
- (5) authorize short-term uses of water without notice or evaluation under certain conditions;
- (6) establish a register of new applications, changes and transfers;
- (7) define and implement procedures for "de minimus" appropriations of surface water;
- (8) process permits within 60 days; and
- (9) waive evaluation of application if water is available.

The PCHB now must provide for expedited, single-member review of contested water allocation decisions and appeals on requests for information. Procedures for appeals of single-member decisions are specified. Appellants at PCHB hearings bear the burden of proof.

Substitute Bill Compared to Original Bill: The requirement that an appellant to the PCHB have standing, as defined by the Administrative Procedure Act, is eliminated. A section of the original bill that implied that single-member appeals of a determination regarding the nature and extent of the information required from an applicant was different than other single-member appeals was deleted, and such appeals were added to the list of "water related agency actions" which are eligible for single-member appeals in section 6. A requirement was added that the department make draft permit decisions available to the public for 30-day comment. A clause in the definition of "good cause" (section 8) was changed to clarify that only legal proceedings which cause work stoppage are legitimate. Minor changes were made in what the application register must contain and how it must be distributed.

Appropriation: None.

Fiscal Note: Requested on January 19, 1996.

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

Testimony For: These changes to the processing of water permits will streamline procedures and create more certainty for the applicant. The department must be clear about what is a complete application. Some of the bottlenecks will be reduced by allowing for de minimus and short term appropriations and single member appeals.

Testimony Against: Standing requirement will have a chilling effect. [Note: this was eliminated in substitute.] The department should be able to ask for information anew if there is a pattern of inaccurate information. Some of the language is too broad, unclear; e.g "good cause"; "protocols." This case-by-case approach to water decisions is a mistake, it doesn't take into account the big picture. The bill should have an acknowledgement of how the tribes must be coordinated for any permit that affects tribal resources.

Testified: Senator Swecker (pro); Bruce Wishart, Sierra Club; Rachael Pascal, Center For Env. Law & Policy (concerns); Paul Parker, WA State Assn. of Counties (pro); Judy Turpin, WA Environmental Council; Dick Ducharme, Builders (con); Terry Williams, NW Indian Fisheries Comm. (pro).