

HOUSE BILL REPORT

HB 2743

As Reported by House Committee On: Agriculture & Natural Resources

Title: An act relating to integration of reclaimed water, water system planning, and groundwater source protection.

Brief Description: Concerning the integration of reclaimed water, water system planning, and groundwater source protection.

Sponsors: Representatives Springer, Graves, Slatter, McBride, Goodman, Rodne, Appleton and Tharinger.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/24/18, 2/1/18 [DPS].

Brief Summary of Substitute Bill

- Requires a reclaimed water permit applicant or permittee to enter into a written agreement with a Group A public water system concerning the protection of groundwater quality before the applicant or permittee may use, store, or deliver reclaimed water within, or in hydrologic connection to, an aquifer or groundwater source covered by a critical aquifer recharge area, a wellhead protection area, or a sole source aquifer area.
- Establishes a dispute resolution process in which a Group A public water system and a reclaimed water permit applicant or permittee may petition the Secretary of Health for a decision in the event the parties are not able to reach an agreement as described above.
- Requires the Department of Ecology and the Department of Health, within existing resources, to provide reasonable technical assistance on certain issues related to reclaimed water, if jointly requested by a Group A water system and a reclaimed water permit applicant or permittee.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Blake, Chair; Chapman, Vice Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Fitzgibbon, Kretz, Lytton, Orcutt, Pettigrew, Robinson, Schmick, Springer, Stanford and Walsh.

Staff: Robert Hatfield (786-7117).

Background:

Water Rights.

Washington operates under a water right permit system. With certain exceptions, new rights to use surface or ground water must be established according to the permit system. The Department of Ecology (Ecology) must consider a four-part test when deciding whether to issue a new water right, specifically whether: (1) water is available; (2) a beneficial use of water would be made; (3) granting the right would impair existing rights; and (4) the proposed use would detrimentally affect the public welfare. If an application passes this test, Ecology issues a permit which establishes a time table for constructing the infrastructure to access the water and for putting water to beneficial use. When the conditions of the permit are satisfied, Ecology issues a water right certificate.

Beneficial Use.

A beneficial use of water includes, but is not limited to, use for domestic water, irrigation, fish, shellfish, game and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation.

Public Water Systems.

Public water systems have specific statutory classifications and regulatory requirements. A Group A public water system is a public water system with 15 or more service connections, regardless of the number of people, or a system serving an average of 25 or more people per day for 60 or more days within a calendar year, regardless of the number of service connections.

The Washington State Board of Health (Board of Health) is directed by statute to adopt administrative rules for Group A public water systems to assure safe and reliable public drinking water. Provisions governing the rules include requirements pertaining to specific topics, including the design and construction of public water system facilities, drinking water quality standards, and public water system planning and emergency response requirements.

Additionally, the Department of Health (DOH), in complying with requirements of the Board of Health, has adopted rules requiring the purveyors of certain community public water systems, including systems with 1,000 or more connections, to develop and submit water system plans for review and approval by the DOH. The water system plans must include specific elements, including system descriptions, basic planning data, demand forecasts, and source water protection provisions for a prospective planning period of 20 or more years.

Reclaimed Water.

Reclaimed water is water derived from a wastewater treatment system that has been treated in order to be suitable for a beneficial use or a controlled use that otherwise would not occur.

Reclaimed water has been used for a variety of non-potable water purposes including irrigation, agricultural uses, industrial and commercial uses, stream flow augmentation, dust control, fire suppression, surface percolation, and discharge into constructed wetlands.

Reclaimed Water - Permits.

A person proposing to generate reclaimed water for certain specified uses must obtain a permit from either Ecology or the DOH, depending on the proposed use of the reclaimed water, prior to distribution or use of that water. The permittee may then distribute and use the water, subject to the provisions in the permit. The permit must include provisions that protect human health and the environment.

Summary of Substitute Bill:

Before reclaimed water may be stored, delivered, or used at a location in hydrologic connection to an aquifer or groundwater source covered by a critical aquifer recharge area, a wellhead protection area, or a sole source aquifer area, the reclaimed water permit applicant or permittee must enter into a written agreement with the affected Group A public water system that protects groundwater quality. A Group A public water system may waive the agreement for a period of time not to exceed the duration of the reclaimed water permit.

An existing and permitted beneficial use of reclaimed water in operation before the effective date of the act is not required to obtain the written agreement described above until the expiration or renewal of the permit for the existing beneficial use. Any expansion or increase of an existing beneficial use of reclaimed water is required to obtain the written agreement described above.

If a permit applicant or permittee and a Group A public water system are unable to enter into the agreement described above, either of the parties may petition the Secretary of Health or his or her designee, who will issue a decision. Before either party may submit such a petition, the parties must have first engaged in good faith efforts to negotiate a written agreement and to resolve the issues through mediation or other facilitated negotiations. Upon request of the Department of Health (DOH), the parties must reimburse the DOH's costs of responding to the petition and issuing a decision.

The Department of Ecology and the DOH are required, within existing resources, to provide reasonable technical assistance on the following issues, if jointly requested by a Group A water system and a reclaimed water permit applicant or permittee:

- the identification of areas within the Group A water system's service area where reclaimed water may be served and the proposed uses;
- the location, schedule, and responsibility for construction and maintenance of facilities to treat, convey, or deliver reclaimed water within the service area;
- the protection of water resources, including current and future public drinking water sources, and other environmental concerns;
- rates and charges applicable to reclaimed water customers;
- potential financial impacts to public water system ratepayers and bondholders; and

- coordination and integration of proposed reclaimed water use into the Group A public water system comprehensive planning process, including financial planning.

Substitute Bill Compared to Original Bill:

A provision is eliminated that would have required that a reclaimed water permit applicant or permittee enter a written agreement with a Group A public water system concerning certain matters, including identification of areas within the Group A public water system service area in which reclaimed water may be provided, and potential financial impacts to public water system ratepayers and bondholders.

The Department of Ecology and the Department of Health are required, within existing resources, to provide reasonable technical assistance on certain issues, if jointly requested by a Group A water system and a reclaimed water permit applicant or permittee

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute 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) Group A water systems have spent significant amounts of money and time to develop an infrastructure for water delivery. That system is in some jeopardy by the use of reclaimed water. As a result, it makes sense to require an agreement to reduce impacts.

There is room for improvement in the current system, and the bill offers improvement. Duplicative infrastructure is a challenge, and financial impacts are a challenge. There is great potential to use reclaimed water in the Dungeness basin for aquifer recharge. It is important not to duplicate infrastructure. Development of interlocal agreements is a more collaborative approach. Group A water systems are required to comply with the Safe Drinking Water Act, and if there is contamination, the Group A water system would have to abandon the well or build a treatment facility. Using reclaimed water for recharge makes more sense, such as shallow aquifer recharge, than delivering to home for use, such as irrigation.

This is a bill about good governance. Reclaimed water can play a role in the state's drinking water future. The bill ensures that drinking water providers have a say in when, where, and how reclaimed water is used. The intent of this legislation is to involve stakeholders in the use of reclaimed water and to address adverse financial impacts of reclaimed water use.

The bill just enhances coordination in water infrastructure. One city has a water system plan that has been approved by the state. Without coordination, reclaimed water can't be part of that plan, but it would be good to be able to use it in the portfolio of water sources. Current

reclaimed water projects in one city are occurring without consultation. Reclaimed water could target large irrigators, which would then siphon off a significant source of revenue for water purveyors, which in turn would impact the water purveyor's bond rating. "One water" is a current trend in the water world - integrating wastewater, water supply, and stormwater. This bill advances toward that concept. One eastern Washington community was able to save \$2,500 per house by coordinating reclaimed water with the water purveyor.

The Department of Ecology (Ecology) and the Department of Health (DOH) have been working since 2006 to adopt rules. The use of reclaimed water could impair one city's aquifer. The city's aquifer is shallow, with high infiltration rates, which increases the possibility of contamination. There are impacts to the critical aquifer recharge area of the city, and the city has no authority outside the city limits, even though its aquifer goes outside the city limits. Reclaimed water represents an important new water source.

Reclaimed water is a statewide issue. The issue of integrating reclaimed water into the water supply system won't be resolved through the rule-making. It doesn't make sense for rate-payers to pay for infrastructure twice.

(Opposed) One county produces reclaimed water. This bill could leave that county with a stranded investment. The bill puts all decision-making on water purveyors. There is support for the rules adopted by Ecology and the DOH, and it would be good to let those rules go forward to see how they work out. The bill was drafted without a larger collaboration of stakeholders.

(Other) The DOH regulates drinking water systems, and jointly implements the reclaimed water program with Ecology. It makes sense for generators of reclaimed water to coordinate. There are some concerns with the obligation to get an agreement in advance. In addition, there are concerns with using the DOH as the decision-maker, since the DOH would need to do rule-making to establish criteria for its decision-making. The Water Systems Coordination Act predates RCW 90.46, and provides a framework for integration of reclaimed water into the water supply that might be more appropriate.

There are concerns regarding the impact this bill would have on further development of reclaimed water. The bill gives authority to potable water purveyors to block additional reclaimed water uses. The new rule adopted by the DOH and Ecology strikes a balance between suppliers and generators, and calls for coordination between the two.

There is concern that written agreements might impede the expanded use of reclaimed water. There does need to be coordination, there are requirements in the rules to provide that. The rules should be given a chance to work, and if there are problems, the Legislature can revisit the issue.

Persons Testifying: (In support) Representative Springer, prime sponsor; Tom Martin, Public Utility District Number 1 of Clallam County; Ray Hoffman, Cascade Water Alliance; Angela Birney, Redmond City Council; Edward Cebron, Woodinville Water District; and Diana Carlen, Cascade Water Alliance.

(Opposed) Mark Issacson, King County Wastewater Treatment.

(Other) Garin Schrieve, Washington State Department of Health; Heather Bartlett, Washington Department of Ecology; and Bruce Wishart, Center for Environmental Law and Policy and Sierra Club.

Persons Signed In To Testify But Not Testifying: None.