

# SENATE BILL REPORT

## SB 5331

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As of February 25, 2003

**Title:** An act relating to certainty and flexibility of municipal water rights and efficient use of water.

**Brief Description:** Providing additional certainty for municipal water rights.

**Sponsors:** Senators Honeyford, B. Sheldon, Parlette, Regala, Hewitt, Hale and T. Sheldon; by request of Governor Locke.

**Brief History:**

**Committee Activity:** Natural Resources, Energy & Water: 1/28/03.

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### SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

**Staff:** Sam Thompson (786-7413)

**Background:** Recent court decisions have raised several questions and issues concerning municipal water rights. It has been suggested that changes in current law are necessary to provide greater certainty to enable municipal water suppliers to meet obligations under approved water system plans, growth management plans, and other land use plans. It is also suggested that municipal water suppliers need greater flexibility in exercising water rights to effectively implement watershed, basin, and regional water management plans.

**Summary of Bill:** Overview. Municipalities and public water systems are authorized to keep the needed portion of their existing water rights--protected from relinquishment through nonuse--and to use them throughout their authorized service area, including use for environmental purposes. Public water systems are directed to meet new water conservation requirements, and are encouraged to plan for reuse of water.

Where watershed or regional water management plans have been adopted, changes are permitted to unperfected municipal water rights. In exchange for additional water use, municipal water right holders must engage in specified mitigation. Out-of-order processing of new water rights is permitted to implement water management plans. Before water management plans are in place, state agencies may enter into "environmental contracts" with water users in two pilot watersheds, one in eastern Washington, the other in western Washington.

"Municipal Water Suppliers" and "Municipal Water Supply Purposes". Only "municipal water suppliers" can hold water rights for "municipal water supply purposes." A "municipal water supplier" is defined as a city, town, county (in certain circumstances), or authorized purveyor serving 15 or more residential connections, or 25 or more residents, for at least 180 days a year. "Municipal water supply purposes" is defined as any beneficial use for which water is provided, including water diverted or withdrawn for certain environmental purposes,

or to meet requirements under an approved watershed plan or comprehensive irrigation district management plan.

With respect to irrigation districts providing public water supplies under state Department of Health (DOH) approval, only those rights used for public water supply qualify as municipal water supply purposes.

Where a municipal water supplier acquires a non-municipal existing water right, the right is exempt from relinquishment for nonuse during pendency of a water right change, and becomes a municipal water supply purpose upon completion of the change.

Water may be diverted or withdrawn under a municipal water supply purpose right to benefit fish and wildlife, water quality, and other instream/habitat values, or for uses addressed in an accepted plan.

Population served and number of connections are not attributes limiting the use of a water right, and are subject to approval by DOH.

Certainty of Inchoate Rights. The inchoate portion of water rights held by municipal water suppliers for municipal water supply purposes will be left in certificate form to the extent of reasonable foreseeable need over the next 50 years. Permitted or new water rights issued to public water systems remain in permit form until the water is put to actual beneficial use as authorized by the permit. In the course of water right changes, or where requested by the water right holder, the Department of Ecology (DOE) issues superseding certificates to reflect the 50-year need. The certificates are subject to all DOH requirements for public water systems, including meeting an approved conservation plan. The certificates may be ordered to install meters and report water use, install fish screens on surface water diversions, etc., as appropriate. Superseding certificates will not affect the priority date of the right, and will not be subject to new instream flow conditions.

Flexible Place of Use. Where requested by a public water system as part of its water system plan, the place of use of municipal purpose rights can be adjusted to be the service area approved by DOH, subject to public review and resolution of any claims of impairment from other water right holders. Only DOE and the Department of Fish and Wildlife (DFW) may file an impairment claim for a proposed service area change on behalf of an instream flow right established by rule, or held for instream flow purposes in the trust water rights program.

Efficient Use of Water. DOH is granted authority to establish enforceable planning requirements, water loss efficiency requirements and water conservation requirements for public water systems in administrative rules. Reuse of water must be considered during sewer and water supply planning.

Other. Where an adopted watershed or regional water management plan, or similar agreement, is in place, and where consistent with that plan, DOE may:

- Approve a change to the unperfected portion of certain surface water rights, or to the purpose of use of an unperfected portion of certain ground water rights, subject to compliance with DOH water conservation requirements and environmental obligations specified in the plan.

- Approve mitigation, including "out of kind" mitigation and credit for avoided impacts, offsetting the adverse effects of additional water consumption on instream resources, as long as existing water rights are not involuntarily impaired.
- Process an application for a new water right out of order from other pending water right applications where needed to implement the plan or agreement.

DOE is authorized to enter into environmental contracts with public water systems to implement watershed or regional water management plans; this authority expires in 2008. Before such plans are in place, DOE, DFW and DOH must develop and approve at least two watershed pilot projects (one in western and one in eastern Washington) providing similar flexibilities to public water systems that agree to enter into a water management environmental contract.

The state may enter into environmental contracts with major public water suppliers in a watershed, for a fixed, renewable term. Contracts specify increased flexibility and environmental obligations of water right holders. Draft contracts are subject to public review, and government-to-government consultation between state and tribal governments, before execution. Contracts are also subject to appeal by third parties to the Pollution Control Hearings Board. Physical water management projects implemented during the term must be approved by the watershed planning unit, or by DOE and DFW in certain circumstances. Reports must be submitted to the Legislature regarding establishment and results of pilot programs.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** The bill addresses key municipal water management issues relating to future population growth, conservation and efficient use of water; the bill provides greater municipal water right certainty, particularly concerning inchoate rights.

**Testimony Against:** The bill actually impairs certainty of water rights with respect to withdrawals of water; "municipal water supplier" and "municipal water supply purposes" definitions are too ambiguous; the bill harms instream flows and does not properly acknowledge seniority of Indian water rights; conditions imposed on protection of inchoate water rights held by small water suppliers are burdensome, especially costs associated with environmental studies.

**Testified:** James Waldo, advisor to Governor Locke (pro); Steve Wehrli, Muckleshoot Tribe (con); Dawn Vyvyan, Yakama Indian Nation (con); Dave Williams, Association of Washington Cities (pro, with concerns); Doug Levy, City of Everett (pro, with concerns); Scott Hazlegrove, Washington Association of Sewer and Water Districts (concerns); Tim Boyd, Columbia-Snake River Irrigators Association (con); Kevin Lyon, Squaxin Tribe and Northwest Indian Fisheries Commission (con); Josh Baldi, Washington Environmental Council (con); John Kerner, Tacoma Water, WWVC (pro); William Hahn, PUD Association Water Committee, Kitsap County PUD (pro with concerns); Hertha Lund, Washington Farm Bureau (con); Jim Halstrom, Washington State Horticultural Association (con); Kristen

Sawin, Association of Washington Business (concerns).