

HOUSE BILL REPORT

E2SSB 6117

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to reclaimed water.

Brief Description: Regarding reclaimed water.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Fraser, Poulsen, Rockefeller, Marr, Kohl-Welles and Kline).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 3/22/07, 3/29/07 [DPA].

Brief Summary of Engrossed Second Substitute Bill (As Amended by House Committee)

- Requires the state to expand both direct financial support and financial incentives for capital investments in water reuse and reclaimed water.
- Creates one taskforce and two sub-taskforces to evaluate and make recommendations on various issues relating to the use of reclaimed water.
- Concludes that a reclaimed water project that reduces the quantity of sewage effluent that is discharged directly into marine waters does not impair any existing water rights.
- Requires state agencies and state facilities to use reclaimed water for nonpotable water uses, where feasible.
- Requires the Department of General Administration to develop a proposal for a comprehensive, campus-wide plan for the use of nonpotable water for irrigation and related outdoor uses.
- Requires reports from the Department of Health and the Department of Ecology on several issues relating to reclaimed water use.

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.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 10 members: Representatives B. Sullivan, Chair; Blake, Vice Chair; Kretz, Ranking Minority Member; Dickerson, Eickmeyer, Grant, Kagi, Lantz, McCoy and VanDeWege.

Minority Report: Do not pass. Signed by 4 members: Representatives Warnick, Assistant Ranking Minority Member; Hailey, Newhouse and Orcutt.

Staff: Jaclyn Ford (786-7339).

Background:

Reclaimed water is an effluent 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 nonpotable water purposes including irrigation, agricultural uses, industrial and commercial uses, stream flow augmentation, dust control, fire suppression, surface percolation, and discharge into constructed wetlands.

The Department of Health (DOH) issues permits to water generators for commercial or industrial uses of reclaimed water and the Department of Ecology (DOE) issues reclaimed water permits for land applications of reclaimed water. The DOH and the DOE were required to adopt a single set of standards, procedures, and guidelines for industrial and commercial uses and land applications of reclaimed water.

Last year, the Legislature passed a bill requiring the DOE to adopt rules for reclaimed water use. These rules must be adopted in coordination with the DOH, and in consultation with the Rule Advisory Committee (RAC). The rules must address all aspects of reclaimed water use, including industrial uses, surface percolation, and stream flow augmentation. Two interim progress reports must be delivered to the Legislature prior to the final adoption in 2010. Upon final adoption, the roles played by the DOH in the management and regulation of reclaimed water will be conditional on the outcome of the rules adopted by the DOE. The DOH's new roles will be defined by the adopted rules.

Summary of Amended Bill:

Intent:

The Legislature affirms that the use of reclaimed water will help mitigate the effects of global warming and climate change, help improve Puget Sound's water quality, help increase instream flows, and achieve both water quality and water supply objectives.

Reclaimed water should be used to preserve potable water for drinking purposes, contribute to the restoration and protection of instream flows, contribute to the restoration of Puget Sound, provide a drought resistant source of water for nonpotable needs, and be a water source to help mitigate the effects of population growth and global warming.

Task Forces:

A task force convened by the DOE will review the potential barriers or issues related to development of reclaimed water projects pursuant to the evaluation of water rights impairment. The task force is composed of a representative from the Water Quality and Water Resources program at the DOE, the Attorney General, the DOH, local governments, tribal governments, water utilities, reclaimed water utilities, wastewater utilities, environmental organizations, agricultural organizations, and businesses, including golf course owners. The task force will report its findings to the appropriate legislative committees on or before December 31, 2007.

The DOE will convene a subtask force composed of members from the existing RAC and reclaimed water users by July 31, 2007, to recommend a long-term dedicated funding program to construct reclaimed water facilities. The subtask force will also consider and recommend provisions on the inclusion of reclaimed water use criteria or requirements as an element of the water use efficiency requirements and for water system, public water system, and regional water plans. In addition, the subtask force will consider the current and potential use of water conservation plans or ordinances, water conservation measures in regional watershed plans, and water conservation programs adopted by cities, towns, or counties addressing the use of reclaimed water where potable water is not required by the DOH. The recommendations are due to the appropriate legislative committees by January 1, 2008.

The DOE will also convene a subtask force composed of members of the existing RAC and reclaimed water users to identify and recommend actions to increase the promotion of reclaimed water as a water supply and water resource management option. Results from the subtask force will be appended to the required interim reports by the RAC.

Reports:

The DOE and the DOH will provide the Legislature with periodic progress reports on the achievement of the expanded, appropriate, and safe use of reclaimed water.

The DOE will report every two years, beginning in December 2007, the extent to which reclaimed water has been identified in the watershed plans as potential sources or strategies to meet future water needs, and provisions in any watershed implementation plans that discuss barriers to implementation of the water reuse elements of those plans.

The DOH will provide a brief report by January 1, 2008, to the appropriate committees of the Legislature on issues regarding greywater, and reclaimed water.

The Department of General Administration will develop a proposal to provide a comprehensive legislative campus-wide plan for the use of nonpotable water in lieu of potable water for irrigation and related outdoor uses. The report is due to the appropriate legislative committees by December 1, 2007.

Expanded Use of Reclaimed Water:

The state will expand both direct financial support and financial incentives for capital investments in water reuse and reclaimed water in order to facilitate the immediate use of reclaimed water for uses approved by the DOE and the DOH.

When feasible, state agencies and state facilities will use reclaimed water for nonpotable water use in lieu of potable water.

Use of reclaimed water will be utilized by state and local planning programs, including incentives for state financial assistance programs and plans that encourage the use of conservation and reclaimed water use.

Permits:

The owner of a wastewater treatment facility has the exclusive right to use, distribute, and recover from aquifer storage reclaimed water without a permit. If reclaimed water is intended to augment or replace potable water supplies, any regional water supply plan or plans addressing potable water supply service by multiple water purveyors will consider using reclaimed water.

Impairment:

Water rights existing downstream from a facility that reclaims water cannot be impaired unless there is just compensation or mitigation for such impairment to a downstream water right that existed prior to August 18, 1997. An impairment procedure is set forth for purposes of determining if there is impairment to a water right that existed prior to August 18, 1997, with a time frame for issuing a written decision and an appeal procedure. Also, reclaimed water that reduces the quantity of sewage treatment effluent discharged directly into marine waters is deemed to not impair any existing water rights.

Amended Bill Compared to Engrossed Second Substitute Bill:

The task force will now consider the ability of the reclaimed water impairment law to address impairment compensation and mitigation. This bill requires the task force to report to the Legislature by December 31, 2007. This bill requires the subtask force to recommend a more appropriate name for "reclaimed water." This bill removes the section relating to the authorization for a city, town, or county to require the use of conservation measures or reclaimed water uses in determining whether a short plat, short subdivision, or subdivision meets requirements for potable water supplies. The subtask force will consider the current and potential use of water conservation plans or ordinances, water conservation measures in regional watershed plans, and water conservation programs adopted by cities, towns, or counties addressing the use of reclaimed water where potable water is not required by the DOH. This bill includes golf course owners in the task force, and reclaimed water users in the subtask forces. It also requires mitigation or just compensation for impairment of downstream water rights. In this bill, when determining impairment, the applicant for a reclaimed water permit will publish notice of their application twice in a newspaper of general circulation, plus any additional publication requirement provided by the DOE. If the DOE receives a claim of impairment within 30 days of the last publication of notice, the DOE will investigate the claim

of impairment and issue a written decision including any conditions required to mitigate the impairment. The decision will be issued within 180 days and will be appealable by any party, regardless whether the party submitted a claim of impairment to the DOE within 30 days of the last publication of notice. The appeal goes to the Pollution Control Hearings Board.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 29, 2007.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) Water needs and demands exceed the supply. Reclaimed water use needs to become a more rudimentary process. The goal should be a streamlining effect for impairment issues and reduce the overall complexity involved in order to advance the use of reclaimed water. Reclaimed water should be promoted in order to increase the likelihood that reclaimed water will replace potable water, where appropriate. King County already has used reclaimed water to reduce the pressure on existing sources of supply. The time is now to use reclaimed water. Washington needs a drought-resistant source of water. New technology makes the use of reclaimed water more affordable. Small treatment plants can treat water at the source for immediate use.

(In support with amendments) Water conservation uses should be supported. Immediate use, however, should be removed from the bill because there is no need to rush. Wastewater treatment facilities should not have exclusive rights, there should be accountability. Exemptions should not be given to facilities discharging into marine waters. The establishment of strong safeguards should be implemented until all the consequences are known. The task forces should include reclaimed water users. Reclaimed water is an important part of the water supply. However, allowing plans to be considered in the decision as to whether a short plat, short subdivision, or subdivision meets requirements for potable water supplies should not be included in this bill. The impairment language should be modified so that all water right holders can be at the table. Reclaimed water is a consumptive use. Liability for water quality may result in additional expenses for golfers if additional requirements are demanded on reclaimed water use.

(Neutral) The RAC members are probably not going to have enough time to complete all the tasks required by the subtask forces.

(Opposed) None.

Persons Testifying: (In support) Senator Fraser, prime sponsor; Richard Reich, Muckleshoot Tribe; Rebecca Berman Phelps, Sierra Club; and Mo McBroom, Washington Environmental Council.

(In support with amendments) Bill Clarke, Washington Public Utility Districts Association and Washington Realtors; Kathleen Collins, Washington Water Policy Alliance; Denise D. Smith, League of Women Voters of Washington; Paul Backman, Western Washington Golf Course Superintendents Association; and Scott Hazelgrove, Washington Association of Sewer and Water Districts.

(Neutral) Melodie Selby, Washington Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.