

SENATE BILL REPORT

SB 6117

As Reported By Senate Committee On:
Water, Energy & Telecommunications, February 28, 2007
Ways & Means, March 5, 2007

Title: An act relating to reclaimed water.

Brief Description: Regarding reclaimed water.

Sponsors: Senators Fraser, Poulsen, Rockefeller, Marr, Kline and Kohl-Welles.

Brief History:

Committee Activity: Water, Energy & Telecommunications: 2/23/07, 2/28/07 [DPS-WM, DNP, w/oRec].

Ways & Means: 3/05/07 [DP2S, w/oRec].

SENATE COMMITTEE ON WATER, ENERGY & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 6117 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Marr, Oemig and Pridemore.

Minority Report: Do not pass.

Signed by Senator Morton.

Minority Report: That it be referred without recommendation.

Signed by Senators Honeyford, Ranking Minority Member; Delvin, Holmquist and Regala.

Staff: Margaret King (786-7416)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6117 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Fairley, Hatfield, Hobbs, Keiser, Kohl-Welles, Rasmussen, Rockefeller and Tom.

Minority Report: That it be referred without recommendation.

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.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Hewitt, Honeyford, Oemig, Parlette, Roach and Schoesler.

Staff: Kirstan Arestad (786-7708)

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 may be 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. DOH and DOE were required to adopt a single set of standards, procedures, and guidelines for industrial and commercial uses and land applications of reclaimed water. These standards were adopted in the mid-1990s, and resulted from consultation with an advisory committee of interested stakeholders.

Last year, the Legislature passed a bill requiring DOE to adopt rules for reclaimed water use. These rules must be adopted in coordination with DOH, and in consultation with an advisory committee, made up of interested stakeholders. 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 DOH in the management and regulation of reclaimed water will be conditional on the outcome of the rules adopted by DOE. DOH's new roles will be defined by the adopted rules.

Summary of Bill: The Legislature underscores its intention to support the use of reclaimed water as a water resource conservation tool to address various issues such as global warming, population growth, water quality and instream flows. The use of reclaimed water is added to the general declaration of fundamentals for water use in Washington.

The owner of a wastewater treatment facility that is reclaiming water has the exclusive right to any reclaimed water generated by the wastewater treatment facility and the use and distribution of reclaimed water by the owner of the facility is exempt from the water rights permitting process. Likewise, the use and recovery of reclaimed water used to recharge aquifers is exempt from the water permitting requirements. The use of reclaimed water is still subject to review under the State Environmental Policy Act.

Proposed uses of reclaimed water that are intended to augment or replace potable water supplies or to be a potential source for new potable supplies must be considered in the development of any regional water supply plans addressing potable water supply service by multiple water purveyors. Water supply plans are defined to include plans that are developed by multiple jurisdictions under the relevant legislative provisions of the Water Resource Planning Act, Public Water System Coordination Act, Public Ground Water Act, Water Shed Planning Act, and the Growth Management Act.

Water rights existing downstream from a facility that reclaims water can not be impaired unless there is 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. There is a legislative declaration of no impairment for: (1) reclaimed water that is discharged in lieu of waste water in basically the same vicinity and general quantity and location; (2) the recovery and use of reclaimed water in lieu of the discharge into marine water; (3) the discharge of reclaimed water into marine water; or (4) the use of reclaimed water facilities to replace septic tanks.

As part of the reclaimed water rule making procedure set forth by the Legislature last year, the reclaimed water advisory committee is to consider issues related to any confusion or conflicts of authority or law between DOH or DOE; inadequate staffing or resources within either or both state agencies, including a brief history of dedicated reclaimed water staffing levels; steps taken to facilitate the development and use of reclaimed water, including review of the actions taken to date by the departments on reclaimed water permit requests or projects proposed to the departments. The committee is also to address significant barriers to the use of reclaimed water and the effectiveness of the reclaimed water program in the current framework within DOE. DOE is to include the above topics in the annual progress reports to the Legislature as the issues are addressed by the committee.

DOE is also to include in its annual watershed report to the Legislature a section setting forth any watershed implementation plans and a discussion in the report regarding any barriers to the implementation of the water reuse elements of those plans.

DOH is to file a report with the Legislature by January 1, 2008, on the general status of the development of permit fees for industrial and commercial uses of reclaimed water and standards, guidelines, and permitting of grey water use. DOH is also to provide information on any health related issues of reclaimed water use.

Where reclaimed water is a feasible replacement source of water, it must be used by state agencies and state facilities for nonpotable water uses in lieu of the use of potable water. Feasible replacement source means: (1) the reclaimed water is of adequate quality and quantity for the proposed use; (2) the proposed use is approved by DOE and DOH; (3) the reclaimed water can be reliably supplied by a local public agency or public water system; and (4) the cost of the reclaimed water is reasonable relative to the costs of conservation or other potentially available supplies of potable water, after taking into account all costs and benefits, including environmental costs and benefits.

State programs to improve water use efficiency should most heavily focus on: areas of the state in which water is over-appropriated; areas that are experiencing diminished stream flows or aquifer levels; regional areas identified by the Governor as a high priority for investment; areas most likely to be affected by global warming; and areas where projected water needs, including those for instream flows, exceed available supplies.

A city, town, or county, in determining whether a proposed short plat, short subdivision, or subdivision meets the requirements for potable water supplies can require:

- 1) conformance to any water conservation ordinances or plans adopted by the city, town, or county;

- 2) use of water conservation measures consistent with any regional watershed plan; and
- 3) use of reclaimed water where potable water is not required, if it is consistent with any applicable local ordinance adopted for water reuse or use of reclaimed water.

Any city, town, or county may adopt a water conservation program that may include conservation measures consistent with specific provisions of a regional watershed plan including:

- 1) landscape irrigation requirements, public fixture retrofit and rebate programs, and commercial and industrial conservation programs;
- 2) use of any opportunities for using reclaimed water where potable water is not required; and
- 3) mandatory use of reclaimed water for nonpotable water uses in lieu of the use of potable water where the jurisdiction has determined that reclaimed water is a feasible replacement.

A task force is created to look at funding and grant programs for reclaimed water projects with specific direction to look at existing funding of current infrastructure programs.

The state Department of General Administration is to work with the local provider of reclaimed water to develop a proposal and plan for the Capitol Campus' wide use of reclaimed water for nonpotable uses. The report is to be delivered to the Legislature by December of this year.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Water, Energy & Telecommunications): Water rights existing downstream from a facility that reclaims water can not be impaired unless there is 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 180-day time frame for issuing a written decision and a 30-day time frame for filing an appeal. An appeal can be filed on the "impairment" decision or a party may wait and file an appeal of the reclaimed water facility permit. There is a legislative declaration of no impairment for: (1) reclaimed water that is discharged in lieu of waste water in basically the same vicinity and general quantity and location as a previous National Pollutant Discharge Elimination System or state discharge permit; (2) the discharge of reclaimed water or the recovery and use of reclaimed water in lieu of the discharge into marine water; (3) the discharge of reclaimed water into marine water; or (4) proposals to replace failing or inadequate septic facilities with a reclaimed water facility or project that is part of a new or expanded wastewater treatment and reclaimed water facility.

The DOE is to form a task force consisting of not more than ten members from the rule advisory committee to identify and recommend action to increase the promotion of reclaimed water as a water supply and water resource management option within the state.

The task force is to look at issues addressed by the rule advisory committee, staffing levels, and roles of reclaimed water within both DOE and DOH as well as suggested optimal organization structure for the future, and unresolved legal issues specific to reclaimed water use. The information from the task force is to be appended to the required interim reports.

The water supply and water conservation provisions related to a regional water supply plan are to conform to the city and county conservation ordinances and water, sewer, and comprehensive land use plans.

The adequacy of water supply and water conservation plans are to be determined solely by the adopting town, city, or county.

If the city, town, or county is not the sole water supplier, the provision of the water conservation program ordinances are to be developed in consultation with all municipal water suppliers that are proposed to be included in the conservation program

The Department of General Administration is to work with the City of Olympia to provide a report to the Legislature by December 1, 2007, of the needed infrastructure, cost, and potential funding sources for a nonpotable Capitol Campus reclaimed water project.

EFFECT OF CHANGES MADE BY RECOMMENDED SECOND SUBSTITUTE AS PASSED COMMITTEE (Ways & Means): Current instream flow augmentation language is maintained. The requirement that reclaimed water will not be used to mitigate impacts of water withdrawals is removed. It is clarified that the task force is a sub task force that will consist of members from the already existing reclaimed water rule advisory committee, which is currently required to look at all aspects of reclaimed water use. Also, the inclusion of the watershed reclaimed water information in the yearly watershed reports to the Legislature is reduced to every two years. And, finally, it is clarified that the campus-wide plan is for reclaimed water use for irrigation and related outdoor uses on capital campus.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony (Water, Energy & Telecommunications): PRO: Overall support for the use of reclaimed water in the bill is long overdue. There is support for the overall concepts of the bill and in particular the task force for funding in Section 14 and the idea that the state will be a mail player in the use of reclaimed water. Adequate funding for reclaimed water is one of the greatest barriers. The reference to the demonstration project for reclaimed water for Capitol Campus should include the City of Olympia as it is the distributor of reclaimed water whereas LOTT produces the water. We are very glad to see the issue of water shortage being addressed and support the overall concept of the bill. There is concern over changes to impairment analysis because it seems to eliminate review by DOE of injury to instream flows and may impact junior users. King County recognizes the importance of reclaimed water to address water quality issues and as a stable source of supply. Streamlining the impairment provision is important if reclaimed water use is to be a viable water supply. The City of Olympia uses reclaimed water on several of its parks and supports this bill, especially Section 15, that provides for a demonstration project on Capitol campus. LOTT should be replaced with the City of Olympia as the entity to be involved with General Administration in the planning process. The resources to implement the bill are not in the

Governor's budget. We appreciate the attempt to streamline the impairment analysis in Section 4.

CON: Section 4 provides problems to downstream users. DOE's proposed language for the impairment section will most likely address the concerns but we believe it would be better to leave the section alone and not amend at this time. The impairment issue needs more focus than can occur during this session. Sections 11-13 remove the purveyor of the reclaimed water from the process and allows cities and counties to dictate use, rates, and conservation standards.

OTHER: We are concerned with Sections 11, 12, and 13. We would like to choose what water to use and not be required to use a particular source. The existing advisory committee is looking at many of these issues, including impairment, and should be allowed to conclude that work.

Persons Testifying (Water, Energy & Telecommunications): PRO: Karla Fowler, LOTT Alliance; Mo McBroom, Washington Environmental Council; Dave Monthie, King County; Rich Hoey, City of Olympia.

CON: Dawn Vyvyan, Yakama Nation; Steve Lindstrom, Sno-King Water District Coalition; Scott Hazlegrove, Washington Association of Sewer and Water Districts; Chris McCabe, Association of Washington Businesses.

OTHER: Melodie Selby, Ken Slattery, Department of Ecology; Kathleen Collins, Washington Water Policy Alliance.

Staff Summary of Public Testimony (Ways & Means): CON: We do not oppose reclaimed water, but have concerns with some of the processes set up in the bill. The bill pre-empts current rule making which changes checking for impairment from what is now a passive activity to a more active one (which partly drives your fiscal note). One way to reduce the fiscal impact of this bill is to remove section 4. A fiscal note from local governments should also be requested. The task force infrastructure finding suggests the committee take the opportunity to expand the infrastructure. There are several co-mingled aspects of the bill that affect the cost of doing business: (1) reclaimed water resource is ongoing; (2) Puget Sound Partnership; and (3) local government/local purveyor impacts.

OTHER: We are in support of reclaimed water, and turf grass affords that opportunity. We're concerned with the tremendous amount of expense to put the infrastructure together. We're also concerned with wordage making reclaimed water use mandatory, and concerned that if we use reclaimed water our water rights would be relinquished.

Persons Testifying (Ways & Means): CON: Steve Lindstrom, Sno-King Water District Coalition; Kathleen Collins, Washington Water Policy Alliance .

OTHER: Paul Backman, Northwest Turf Grass Association.