

SENATE BILL REPORT

SHB 1793

As of March 20, 2015

Title: An act relating to working within the existing in-stream flow rules adopted by the department of ecology to provide a suite of tools, applicable to property owners located in areas with limited access to legal new water withdrawals, for alternative water procurement that does not result in a net loss to area surface waters.

Brief Description: Working within the existing in-stream flow rules adopted by the department of ecology to provide a suite of tools, applicable to property owners located in areas with limited access to legal new water withdrawals, for alternative water procurement that does not result in a net loss to area surface waters.

Sponsors: House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Lytton, Stanford, Fitzgibbon, Tharinger and Morris).

Brief History: Passed House: 3/05/15, 53-45.

Committee Activity: Agriculture, Water & Rural Economic Development: 3/17/15.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Staff: Bonnie Kim (786-7316)

Background: Instream Flow Rules. The Department of Ecology (Ecology) manages state water resources to resolve conflicts between out-of-stream uses, e.g. domestic, commercial, and agricultural uses, and instream flows needed to preserve the natural environment. Generally Ecology must base water allocation among potential uses and users on the principle of securing maximum net benefits for the people of the state. Ecology must also, however, set minimum instream flows to protect instream resources, e.g. fish and wildlife habitat and water quality. Ecology establishes instream flow rules for the state's major river basins and typically bases rules on the stream flows needed to support healthy fish populations. Ecology may authorize withdrawals of water conflicting with base flows necessary to preserve instream values only in situations where it is clear that overriding considerations of the public interest will be served.

In April 2001, the Skagit River Basin Instream Resources Protection Program Rule (WAC 173-503) established minimum instream flows throughout the basin in water resource inventory areas 3 and 4. Eight businesses and 475 homes have relied on Skagit reservations

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– finite water amounts set aside for specific future uses – for their water supplies since 2001. In 2006 Ecology found that limited reservations would not substantially harm fish populations and amended the rule to establish reservations of surface and groundwater for future out-of-stream uses. The reservations provided uninterrupted (year-round) water supplies for new agricultural, residential, commercial or industrial, and livestock uses across 25 subbasins.

In October 2013, the Washington Supreme Court invalidated the 2006 amendments, holding that Ecology could not set aside water reservations through water management rules where it had previously set aside water to support stream flows for fish. Since the court decision, Ecology has exercised its enforcement discretion not to curtail water use of homes and businesses that have relied on the 2006 reservations.

Groundwater Exempt Wells. Generally, all groundwater withdrawals require an application to and permit from Ecology. There is a class of lawful, unpermitted wells, often referred to as permit-exempt wells, however, which may be constructed and used without a permit. Exemptions from the permitting requirement include any withdrawal of public groundwater for stock-watering purposes or for watering a lawn or a noncommercial garden less than one-half acre. Single or group domestic uses or industrial purposes not exceeding 5000 gallons per day are also included in the class of permit exempt wells.

State Building Code and Potable Water. The State Building Code requires all building permit applicants to provide evidence that an adequate supply of potable water will be available for the proposed building. Adequate evidence may include possession of a water right or a letter from a water purveyor stating the ability to provide water to the building. All public water systems must provide an adequate quantity and quality of water in a reliable manner at all times.

In most cases, adequate and reliable potable water is supplied either from a source located off of the property by an approved water purveyor or a permit-exempt well located on the property. Certain counties issue building permits when the potable water supply is to be provided from a source other than a traditional, piped water purveyor or a permit-exempt well. These alternative sources include rainwater collection and on-site cisterns filled with water delivered by a truck. The counties that allow some form of alternative water supply to satisfy the potable water condition of a building permit include Kittitas, San Juan, King, and Jefferson.

Summary of Bill: Local Ordinances. Certain counties and cities must adopt ordinances that outline when and how alternative water supplies may be used to satisfy the potable water requirements for new construction. These ordinances must be developed by any city or county that has, as part of its jurisdiction, a property which is not eligible to be served by a water purveyor and for which new, unmitigated surface or groundwater withdrawals are not legally available on a year-round basis. If required, ordinances must allow and address the appropriate limits and conditions of alternative water supplies, such as trucked delivery of water, rainwater collection, and treatment systems. Ordinances relating to alternative water supplies may not require any landowner to use the allowed alternative water supplies or override any health and safety duties of the local government.

Information Distribution. Ecology must make available to relevant landowners information relating to alternative water and mitigation options in their area. When appropriate this information must be distributed in cooperation with any affected counties.

Capital Project Violations. Ecology must coordinate with local government entities and utility districts to identify possible capital projects that may assist in providing water to remedy any possible violations of the Supreme Court's 2013 ruling in *Swinomish Indian Tribal Community v. Washington State Department of Ecology*.

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: PRO: Water is the lifeblood of our state. We have had decades of litigation in Skagit and I wanted to find solutions and mitigation options to make sure our economy remains strong and people can have year-round water in their homes. Tribes are interested in local tools and local solutions. Ecology supports the use of alternative water strategies as a tool. Ecology believes it can meet the aggressive timeline in the bill. This bill provides a balanced path forward for areas facing water scarcity. Thirty percent of Hawaiian homes are on alternative water systems for drinking water.

CON: This bill attempts to fix the Skagit issue but affects other counties as well. Homes built between 2001 and the 2013 opinion were permitted by Skagit County. It is problematic to have a bill deeming those permits illegal. Thousands of people in the Skagit River basin have been notified they have an interruptible water source. Property values have been lowered and people cannot sell or refinance their homes. None of the remedies are prohibited by statute but are expensive. Cities do not typically allow trucked water because they usually just put a moratorium on water use. The suggested alternatives are not suitable to the urban environment. Septic systems do not reduce instream flows. I would like some sessions to review the policies.

OTHER: Water captured in rain barrels or cisterns may affect river levels or render other uses not water neutral. We would like to see an amendment requiring rulemaking. The recent *Hirsrt* court opinion may assist in defining legal availability of water.

Persons Testifying: PRO: Representative Lytton, prime sponsor; Jeanne Cushman, Squaxin Island Tribe, Port Gamble S"Klallam Tribe, Swinomish Tribe; Bruce Wishart, Sierra Club, Center for Environmental Law and Policy; David Christensen, Ecology.

CON: Cindy Alia, Citizens Alliance for Property Rights; Bill Clarke, WA Realtors; Jan Himebaugh, Building Industry Assn. of WA; Kathleen Collins, WA Water Policy Alliance; Ken Morse, The Olympia Tea Party.

OTHER: Dawn Vyvyan, Yakama Nation, Puyallup Tribe of Indians; Evan Sheffels, WA Farm Bureau.

Persons Signed in to Testify But Not Testifying: No one.