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**Economic Development,  
Agriculture & Trade Committee**

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**HB 1713**

**Brief Description:** Modifying water right application requirements for domestic water supply to fourteen or fewer service connections.

**Sponsors:** Representatives Woods, Grant, Sump and Haler.

**Brief Summary of Bill**

- Specifies the service connection figure does not limit exercise of a water right for domestic water supply to fourteen or fewer service connections.
- Exempts water rights for domestic water supply from relinquishment.

**Hearing Date:** 2/23/05

**Staff:** Caroleen Dineen (786-7156).

**Background:**

Water Rights. A water right has several elements or conditions that identify limitations on the use of water under the right. One is its priority. Other elements of the water right include: the amount of water that may be withdrawn from a particular water source under the right, the time of year and point from which the water may be withdrawn, the type of water use authorized under the right (such as an agricultural or municipal use), and the place that the water may be used.

Once it is properly established, a water right is perpetual as long as it is used. However, a water right may be forfeited for non-use through either abandonment or relinquishment. Generally, if a water right holder voluntarily fails to put water to beneficial use for five successive years, the water right holder relinquishes the right or the portion of the right not used. Numerous exemptions to the relinquishment provisions are specified in the water code.

Transfers. Certain elements or conditions of a water right may be modified with the approval of the Department of Ecology (DOE), either directly or through its review of the decision of a water conservancy board. These modifications are referred to in the water codes as transfers, changes, and amendments. Approving a transfer does not affect the priority date of the right. The transfer cannot be approved if it would impair other existing water rights, whether junior or senior.

Municipal Water Rights. In the past, many water right certificates were issued for municipal use once the main withdrawal and distribution works had been constructed for using the water, but before all of the water was actually put to use. Under this "pumps and pipes" philosophy, a municipality could develop its actual use over time without affecting its certificated water right. The Washington Supreme Court determined in a case involving the water right of a private developer that a final water right certificate may not be issued for the developer's right for a quantity of water that has not actually been put to beneficial use. Department of Ecology v. Theodoratus, 135 Wn. 2d 582 (1998). The Court in Theodoratus declined to address issues concerning municipal water suppliers.

Legislation enacted in 2003 declared water rights represented by a water right certificate issued in the past for municipal water supply purposes under the "pumps and pipes" philosophy to be in good standing. (2E2SHB 1338, enacted as Chapter 5, Laws of 2003, 1st sp. sess.). The 2003 legislation required the DOE to issue any new water right certificates only for the perfected portion of the right as demonstrated through the actual beneficial use of water. A water right held for municipal water supply purposes is defined generally as one including 15 or more residential service connections or for certain nonresidential and governmental purposes.

The 2003 legislation also specified that information in an application or subsequent water right document for a municipal water right regarding the number of hookups or the population to be served does not limit the exercise of the right regarding the hookups or population if two conditions are satisfied. First, the municipal supplier must have a water system plan approved by the Department of Health (DOH) or have the DOH's approval to serve a specified number of service connections. Second, the water service to the hookups or population served must be consistent with the plan or DOH approval.

Water rights claimed for municipal water supply purposes are not subject to relinquishment.

**Summary of Bill:**

Provisions regarding exercise of water rights for non-municipal domestic water supply are specified. The service connection figure in an application or subsequent water right documents for a right to supply domestic water to fourteen or fewer service connections is not an attribute limiting the exercise of the water right if the amount of water withdrawn or diverted under the water right does not exceed the instantaneous or annual amounts authorized in the permit or subsequent water rights documents.

A water right for domestic water supply to fourteen or fewer service connections is not subject to relinquishment under the water code.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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