

SENATE BILL REPORT

ESSB 6467

AS PASSED SENATE, FEBRUARY 15, 1994

Brief Description: Modifying water right permit provisions for water used for municipal purposes.

SPONSORS: Senate Committee on Energy & Utilities (originally sponsored by Senators Fraser, Hochstatter, Morton and M. Rasmussen)

SENATE COMMITTEE ON ENERGY & UTILITIES

Majority Report: That Substitute Senate Bill No. 6467 be substituted therefor, and the substitute bill do pass.

Signed by Senators Sutherland, Chairman; Ludwig, Vice Chairman; Amondson, Hochstatter, Owen, Roach, A. Smith, West and Williams.

Staff: Jeff Baird (786-7444)

Hearing Dates: February 1, 1994; February 4, 1994

BACKGROUND:

Washington, like most western states, follows a form of the prior appropriation doctrine, granting water rights in perpetuity to the party and property that first establishes beneficial use and ordering priority of use and quantity of use by a process of "first in time, first in right" and "use it or lose it." Thus, late coming users may face use restrictions during times of water shortage, making priority critical, and prior users may lose a portion of their appropriation by failing to keep up beneficial use. Rights can be transferred, however, subject to regulation and approval, such that a new user may gain priority over a prior user or an existing user may gain rights to use more water.

Water rights are granted and regulated by permit by the Department of Ecology. Under the Water Code, the department must consider a variety of factors in regulating municipal water use, water rights, and water system construction projects. Municipal purpose water users have special problems due to population fluctuations and projected growth plans. The "use it or lose it" provisions, particularly under the five-year horizon specified in the water code, need modification as applied to municipal users.

SUMMARY:

"Municipal purpose" is defined broadly to include all water distributed by public system purveyors that is integral to a public water system. Certain wells are excluded.

The intent section clarifies the prominent role that growth management plans, land use plans, and demand projections should play in allocation of water for municipal purposes. Generally, allocation for municipal purposes should not rest on prior appropriation alone, but on reasonably forecast appropriation needs consistent with regional planning. Further, efforts to encourage conservation and water use efficiency should be rewarded, not discouraged, under the water code.

The department is directed to consider likely delays in municipal water construction projects when such delays are caused by reasonable efforts to find public financing, to meet land use plans, and to prepare conservation plans.

Perfection of municipal rights occurs not with installation and use, but with installation of diversion structures that are consistent in their capacity with growth projections and state-approved water system plans.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

This bill provides for consensus-based water management consistent with the Growth Management Act and other land use plans and allows municipal purpose water suppliers to grow into their rights consistent with basin planning. The prior appropriations doctrine needs to be, and traditionally has been, modified in the context of municipal purposes because the doctrine overprotects senior users and inhibits municipal growth and adaptation.

TESTIMONY AGAINST:

Transfer of rights requires an up front examination of instream flow problems that can affect fish habitats and the rights of newer users. Specifically, the bill perpetuates past errors of over allocation to municipal users.

TESTIFIED: PRO: Bruce Wishart, Sierra Club; Pat Sumption, Friends of Green River; Mt. Glover Washington N Reactors; Lou Dooley, Pierce County PWS & Utilities; Kris Heints, WA Associated Water Systems; Ian Munce, City of Anacortes; Joe Daniels, WA State Water/Wastewater Assn.; Dan Lowell, City of Everett; John Kirner, Tacoma Utilities; Lloyd Warren, City of Bellevue; Bob Wabben, WA Water Utilities Council; Dave Siberg, Kitsap PUD; Bob Grozniak, City of Seattle; Kathleen Collins, Association of WA Cities; Dave Arbaugh, WA PUD Assn.; CON: Jan Teague, Building Industry Assn. of WA; Rich DeRemer, Mike Krautkramer, Tim Gutman, WA State Drilling and Groundwater Assn.; Dr. Hayes, WIDG WA; Allen Devlin, Grayland Cranberry Assn.; Karen Poulsen;