

SENATE BILL REPORT

SB 6467

AS REPORTED BY COMMITTEE ON ENERGY & UTILITIES, FEBRUARY 4, 1994

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

SPONSORS: 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.

SUMMARY:

"Municipal purpose" is defined.

The department is directed to investigate municipal applications for appropriations to find consistency with land use plans and policies.

The "Director of Fish and Wildlife" is substituted for references to separate directors.

In fixing schedules for municipal water system construction projects, the department is directed to consider land use plans and demand projections, conservation plans, and public financing terms, particularly as these factors may cause foreseeable delays in construction.

The department is directed to review provisions for meeting quality standards and land use plans, as well as impact on existing rights, before it issues amended permits for changes in municipal water rights.

The department shall not diminish quantities or require relinquishment of water appropriated for municipal purposes unless the department can show the appropriation is excessive according to land use plans and demand projections and that an applicant public water system lacks capacity to make full beneficial use.

Appropriation is perfected, that is, priority rank is established, when permanent diversion facilities are installed and in use.

EFFECT OF PROPOSED SUBSTITUTE:

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.

"Municipal purposes" is redefined.

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.

The department is directed to approve changes in or transfers of rights within 90 days of receipt of application, if a proposed change or transfer can be shown to be non-harmful to existing rights and to be consistent with comprehensive plans.

The Departments of Ecology and of Fish and Wildlife, along with the public water system, are directed to implement a consensus-based process of review for transfers that affect instream flows, fish habitat or rights of junior users.

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 upfront 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 Association; 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 Association; CON: Jan Teague, Building Industry Association of WA; Rich DeRemer, WA State Drilling and Groundwater Association; Dr. Hayes, WIDG WA; Tim Gutman, WA State Drilling and Groundwater; Allen Devlin, Grayland Cranberry Association; Karen Poulsen; Mike Krautkramer, WA State Drilling and Groundwater Association