

# HOUSE BILL REPORT

## SSB 5526

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### As Reported By House Committee On:

Agriculture & Ecology

**Title:** An act relating to exempting certain diversions of surface waters from the permit process.

**Brief Description:** Allowing for the diversion of certain river or stream waters without a permit.

**Sponsors:** Senators McDonald, Sellar and Anderson.

### Brief History:

#### Committee Activity:

Agriculture & Ecology: 3/26/97, 3/27/97, 4/3/97 [DPA].

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## HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** Do pass as amended. Signed by 7 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Delvin; Koster; Mastin and Sump.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper and Regala.

**Staff:** Kenneth Hirst (786-7105).

**Background:** Water Resource Management - General. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water are established under a permit system. However, certain uses of groundwater not exceeding 5,000 gallons per day are exempted from this permit requirement. The permit system is based on the prior appropriation doctrine that "first in time is first in right." Other laws authorize the state to establish minimum flows and levels for streams and lakes. The permit system and the state's laws for managing water resources are administered by the Department of Ecology (DOE).

**Summary of Amended Bill:** Municipal Diversions Near Saltwater. A water use permit is not required for a diversion of water for municipal purposes from a river with an instantaneous minimum flow of at least 50 cubic feet per second at the point of diversion

if the diversion is within one mile upstream of the point at which freshwater begins to mix with saltwater.

These diversions of a single diverter may not put to beneficial use more than 10 percent of the instantaneous water flow in the area of the diversion. The combined total of these diversions may not exceed 30 percent of the instantaneous flow in the area.

A person seeking to divert water in this manner must notify the DOE in writing of the intent to divert water and identify the location of the point of diversion, and the amount of water to be diverted. Such a diversion is entitled to a right equal to that established by a water use permit and is subject to minimum water flows or levels established by rule. The date of priority of such a water right is the date appropriation for municipal uses commences.

**Amended Bill Compared to Substitute Bill:** The amendment removes express authority to establish, without a water use permit, a water right for municipal purposes from a freshwater body impounded behind an outlet control facility that is within one mile of the point freshwater begins to mix with saltwater.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** (1) ninety-seven percent of the Earth's water is saltwater; 1.5 percent is in polar ice. We need to use the remaining amount wisely. This state is second only to Alaska in the volume of freshwater sent from a state to saltwater. (2) The bill represents creative thinking. It allows the removal of water in the lower reaches of streams where municipal uses generally are located; water supply impoundments are generally well upstream where diversions can have greater environmental impacts. (3) Population growth is coming. We must accommodate it.

**Testimony Against:** (1) The broad language in the bill may have unintended impacts such as on estuaries and navigation. (2) Trade-offs, such as allowing these withdrawals if the return water is treated and released upstream, are not required. Review, not just notice, is required to avoid adverse impacts. (3) A 30 percent reduction in flows at the Ballard Locks would impair the use of Lake Union. (4) The recent agreements reached with the Corps of Engineers for the use of the Cedar River represent an attempt to avoid the conflicts that exist in all but high flow years over water uses involving Lake Washington, its tributaries, and the locks. (5) The permit process involves four tests regarding water availability and impacts that will not apply to these diversions.

**Testified:** Senator McDonald, prime sponsor; Senator Morton; and Doug Levy, city of Everett (in favor). Greg Stewart, Rivers Council of Washington; Judy Turpin, Washington Environmental Council; and Ken Slattery, Department of Ecology (opposed).