

HOUSE BILL REPORT

SHB 2800

As Passed House:

February 13, 1998

Title: An act relating to temporary water rights for cities with populations no greater than five thousand.

Brief Description: Prescribing procedures for temporary water rights for small cities.

Sponsors: By House Committee on Agriculture & Ecology (originally sponsored by Representatives Cairnes, Cooke, Chandler, Pennington and Robertson).

Brief History:

Committee Activity:

Agriculture & Ecology: 1/28/98, 2/5/98 [DPS].

Floor Activity:

Passed House: 2/13/98, 56-42.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. 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: Bill Lynch (786-7092).

Background: The Growth Management Act requires the designation of urban growth areas in which urban growth is to be encouraged. Urban growth areas are to include areas and densities sufficient to accommodate the urban growth that is projected in the county for the next twenty-year period. The Office of Financial Management is required to prepare a 20 year growth management population projection at least every 10 years for each county. Population forecasts do not take into account the amount of water that is available to accommodate the growth.

Summary of Bill: A city with a population of 5000 or less may file an application to withdraw groundwater with the Department of Ecology if: the city has a sole source of

continuously available water supply which may not be interrupted, and that source may be at risk of failure due to contamination or to source location factors such as steep slopes; the city has an approved comprehensive plan under the Growth Management Act and the plan includes an urban growth area that the city will be required to serve; the city's current water supply is insufficient to meet the future population demand forecasted in the plan throughout the entire ten-year time period beginning with the adoption by the city of the plan; the city has no currently available reasonable alternative source or supplier to meet the demand; and the city has identified a permanent alternative firm supply of water to meet the forecasted demand, and the city reasonably expects that source of water will be available within 10 years of the date of the city's adoption of the plan.

The Department of Ecology is required to approve an application from a city to withdraw groundwater within 120 days after the filing of the application if all the criteria for filing an application has been met. The Department may either issue a permit to the city for the amount of water requested in the application as is reasonably necessary to meet the city's forecasted future demand; or the Department may issue a temporary permit to the city for an amount sufficient to enable the city to meet the demand forecasted in the city's approved plan throughout the 10 year period beginning with the date of the application.

A temporary permit may not be issued for a time period beyond 10 years. If a city files a verified report demonstrating the continued need for the temporary permit before the permit's expiration, and the report describes specific steps by the city to obtain a sufficient permanent supply of water, then the Department must extend the duration of the temporary permit for one or more additional five-year periods if reasonable progress is being made toward securing the permanent supply.

When a temporary water permit is issued to a city, and the city expects to receive water through an intertie as the permanent alternative source of water, water delivered through the intertie to the city is attributed to the water right of the public water system delivering the water.

A temporary water permit may not be perfected as a water right, and no water right certificate may be issued for a temporary water permit. A temporary water permit may not be used to provide water to a golf course.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: The city of Black Diamond has developed an innovative urban growth area under its growth management plan which sets aside considerable open space, would promote economic growth, and has the support of major landowners outside the city. If progress isn't shown on securing water for the plan, the agreement between parties could unravel. The bill would allow a well to be drilled to serve as a bridge source of water until pipeline 5 is in operation.

Testimony Against: It isn't clear that the exemption provided in the bill only applies to Black Diamond. The bill language referring to "overriding public interest" usually is interpreted narrowly by the courts, and is usually applied only to existing uses after conservation methods have been imposed. This grants a permit without going through the 4-part test for other water permits. This could impair existing water rights. There is no guarantee that this water right is temporary. It is not certain that pipeline 5 will be built. This could harm instream flows, which are already not being met in the Green River. This issue is better examined in context with other related issues.

Testified: Howard Butts, Mayor of Black Diamond (pro); Jason Paulsen, Black Diamond city planner (pro); Judy Turpin, WA Environmental Council (con); John Rosapeppi, Sierra Club (con); Steve Wehrly, Muckleshoot Tribe (con); Karla Kay Fullerton, WA Cattlemen's Association (con); and Ken Slattery, Dept. of Ecology (con).