

SENATE BILL REPORT

SB 5526

As Reported By Senate Committee On:
Agriculture & Environment, February 20, 1997

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 & Environment: 2/6/97, 2/20/97 [DPS, DNPS].

SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 5526 be substituted therefor, and the substitute bill do pass.

Signed by Senators Morton, Chair; Swecker, Vice Chair; Rasmussen, Newhouse and Oke.

Minority Report: Do not pass substitute.

Signed by Senators Fraser and McAuliffe.

Staff: Richard Duggan (786-7414)

Background: The state Water Code prescribes a permit system as the exclusive means currently available under Washington law to legally establish a right to surface water.

The statutory procedure involves submission of an application to the Department of Ecology, followed by investigation by the department of the application, the amount of water available for appropriation by the applicant and the beneficial uses to which that water can be applied. If the department finds that water is available for appropriation for a beneficial use, and that the proposed appropriation would not impair existing rights or be detrimental to the public welfare, it issues a permit.

After the permit has been issued, the applicant must perfect the appropriation by construction of the necessary facilities and application of the water to the beneficial uses described in the permit. The department then issues a water right certificate, recognizing establishment of the right as of the date of the original application. That date is determinative of the priority to be accorded to the owner of the right in the event it becomes necessary to resolve conflicting claims.

Summary of Substitute Bill: Establishment of a right to use water for municipal purposes, without first complying with the permit requirement, is allowed for diversions under either of two conditions:

a) from a river with an instantaneous minimum flow of at least 50 cubic feet per second, if the point of diversion is within a mile of the point where the fresh water begins to mix with salt water, or

b) from fresh water impounded by an outlet control facility, if the control facility is not more than a mile upstream from the point where fresh water in the outflow begins to mix with salt water.

The quantity of water which may be diverted from a river by any one diverter without a permit is limited to the beneficial use of no more than 10 percent of the instantaneous flow of the river in the specific area of the diversion, and all diverters combined are limited to diversion of no more than 30 percent of that base.

The quantity of water which may be diverted from a fresh water impoundment behind an outlet control facility by any one diverter without a permit is limited to the beneficial use of no more than 10 percent of the annual average inflow to the impoundment, and all diverters combined are limited to diversion of no more than 30 percent of that base.

The diverter is required to give notice to the Department of Ecology of its intent to divert, with the location of the diversion point and the amount to be diverted specified.

Water rights established in this manner are recognized as equal to those established by permit, relating back to the date the appropriation for municipal begins.

Substitute Bill Compared to Original Bill: Measurement at the time and location of the diversion replaces annual average flow in determining the minimum size of rivers subject to exempt diversions. For impounded fresh water bodies, the location of an outlet control facility less than a mile upstream from the point at which its outflow begins to mix with salt water is made a condition for eligibility, the location of the diversion is eliminated as a condition, and a limit based on inflow to the impoundment is placed on the quantity of water which may be diverted. An effective date for the right acquired by an exempt diverter is established.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The exemption provided in the bill makes available for municipal uses water that is about to flow into the Pacific Ocean or Puget Sound. Facilitating downstream diversions would ease demand for upstream rights. Elimination of permit requirement affects only the basic right to use of water, leaving in place and undiluted all rules and regulations governing water appropriation and environmental protection.

Testimony Against: The diversion of water in the immediate vicinity of salt water might cause the point at which the mixture occurs to move upstream. The river flow specified might have a major effect on fish and navigation. There is no provision included in the bill for lakes under a moratorium. The concept of diverting water just before mixing with salt

water is lost in the failure to connect the impounded fresh water body to salt water. There is no protection in the bill for upstream water rights. Fresh water flowing into a salt water body is not wasted.

Testified: Ken Slattery, Dept. of Ecology; Judy Turpin, Washington Environmental Council (con); Paul Parker, WA Association of Counties (pro); Joe LaTourrette, Rivers Council of WA (con); Doug Levy, City of Everett, water utility (pro).