

# SENATE BILL REPORT

## SB 6334

---

As of January 16, 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:** Senators Johnson, Rasmussen, Morton and Swecker.

**Brief History:**

**Committee Activity:** Agriculture & Environment: 1/20/98.

---

### SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

**Staff:** Bob Lee (786-7404)

**Background:** The Surface Water Code was enacted in 1917 and the Ground Water Code was enacted in 1945. These statutes codified the first-in-time is first-in-right prior appropriation doctrine and also included consideration of the connection between surface and ground water. This connection is referred to as hydraulic continuity.

The 1971 Water Resources Act provides for the establishment of instream flow levels through the adoption of an administrative rule for streams in a basin. Part of that statute allows for the withdrawal of water that would conflict with instream flows to be authorized only in situations where it is clear that "overriding considerations of the public interest will be served." "Public interest" in relation to water right matters has not been defined in state statute.

In 1979, a statute was enacted clarifying that an instream flow established by rule was to be considered as a water right and is protected from impairment like other water rights.

In recent litigation, the Pollution Control Hearings Board ruled that applications for permits to withdraw ground water that would have even a negligible effect on instream flow levels would be considered as impairment of the instream flow water right which affects the ability to approve a permit.

The Growth Management Act provides for the estimation of the increase in population growth for the next 20 years. Cities and counties are then to establish urban growth areas and to plan the necessary public infrastructure, including water service, to accommodate that projected growth.

Pipelines that connect public water systems are referred to in statute as "interties." There are specific statutory provisions relating to approval of water right transfers through interties.

**Summary of Bill:** The Legislature finds that an application to withdraw ground water "serves overriding considerations of public interest" when all of the following criteria are met:

1. The application is filed or held through assignment by a city with a population of 5,000 people or less;
2. The city has a sole source of firm water supply that might be at risk of failure due to contamination or geologic hazard;
3. The city has a comprehensive plan approved under the Growth Management Act and the plan that includes an urban growth area that the city will be required to serve;
4. The city's current water supply is not sufficient to meet the future demand for the ensuing 10 year period;
5. The city has no currently available reasonable alternative source or supplier to meet the demand; and
6. The city has identified a permanent alternative firm supply of water that is expected to become available within 10 years.

If all of the above conditions are met, the Department of Ecology is required to approve an application to withdraw ground water within 120 day of the city's request to have the city's application considered under this act. The department may either issue a permit for the amount of water needed for the city's future demand forecasted in the city's plan (assumed to be for 20 years) or to issue a temporary permit for enough water to meet the city's needs for the next 10-year period. The department shall cancel a temporary permit if the city obtains an alternative permanent firm supply. The term of the temporary permit may be extended in five year increments if a firm supply is not secured but reasonable progress is being made.

**Appropriation:** None.

**Fiscal Note:** Requested on January 13, 1998.

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