

***Agriculture & Ecology Committee***

***HB 1875***

***Brief Description:*** Clarifying rights and duties of municipal water suppliers.

***Sponsors:*** Representatives G. Chandler, Linville and Woods.

***Brief Summary of Bill***

- *Explicitly adopts a growing communities doctrine that governs water rights for municipal water supplies and allows municipal water suppliers to acquire and maintain water rights for reasonably anticipated future needs.*
- *Allows such a municipal water use to take place under such a right within 50 or more years of the latest approval of certain water system plans and for the use to take place within the service areas identified in such plans.*
- *Identifies the water right holders who are municipal water suppliers for these purposes.*
- *With certain exceptions, prohibits the Department of Ecology (DOE) from rescinding or reissuing any water right certificate.*
- *Requires the Department of Health (DOH) to adopt as rules conservation and system efficiency standards that apply to each municipal water supplier with at least 1000 service connections.*

***Hearing Date:*** 2/16/01

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

***Background:***

*The Surface Water Code identifies certain information that must be provided by an applicant for a water right and allows the DOE to require additional information. If the application is for a municipal water supply, the information must include the present*

*population to be served and an estimate of the future requirements of the municipality. If a water right is claimed for municipal water supply purposes under the code, it is not subject to relinquishment under the water right relinquishment statutes. (RCW 90.03.260 and 90.14.140.)*

*Once a water right permit is issued to an applicant, the applicant must diligently implement its requirements, including a construction schedule. (RCW 90.03.320.) The code as it was enacted in 1917 and as it is today requires the state (originally the State Hydraulic Engineer, now the DOE) to issue a water right certificate upon a satisfactory showing that the appropriation has been "perfected" in accordance with the code. (RCW 90.03.330 and Section 34, Chapter 117, Laws of 1917.) The Ground Water Code enacted in 1945 requires a certificate stating that the appropriation has been "perfected" to be issued upon a showing that construction has been completed in compliance with the terms of the permit. The latter code identifies specific information that is required for such a showing and allows the DOE to require additional information. (RCW 90.44.080.)*

*Through the years, many water right certificates were issued by the state for municipal use once the main withdrawal and distribution works had been constructed for using the water, but before all of the water was actually put to use. This is sometimes referred to as a "pumps and pipes" basis for issuing a certificated water right. In a 1998 case involving the water right of a private developer, the state's Supreme Court stated that a final water right certificate could not be issued for the developer's right for a quantity of water that had not actually been put to beneficial use. The court stated in its decision that it declined to address issues concerning municipal water suppliers in the context of the case. (Dep't of Ecology v. Theodoratus, 135 Wn.2d 582 at page 594.) Nonetheless, the court followed this declaration with a discussion of the possible effect of a gubernatorial veto of a bill regarding water rights for municipal water supplies. In a draft policy that the DOE circulated last year and subsequently withdrew, the DOE stated its conclusion that the holdings of the court in the case apply to all water rights, including municipal water rights. (Draft Water Resource Program Policy 1250.)*

### **Summary of Bill:**

*It is declared to be in the public interest for municipal water suppliers to be able to use water resources to meet current and future water supply needs and to achieve the objectives of the state's Growth Management Act, where applicable. A growing communities doctrine that acknowledges the role of municipal water suppliers to maintain sufficient water to support future growth within the state is explicitly adopted. Water rights must be interpreted and administered in recognition of the role and duties that municipal water suppliers have to serve growing communities. Municipal water suppliers may acquire and retain water rights for reasonably anticipated future needs. Water rights held by municipal water suppliers must have a place of use that is consistent with applicable growth management and water system planning statutes. (Section 1.)*

*The reasonable diligence required by water law for fully developing new and existing water rights must, for rights held by municipal water suppliers, be interpreted in a manner that is consistent with the needs of growing communities for reasonable assurance of continued future water supply. (Section 1.) The Surface Water Code's protection of an inchoate right*

*that is prosecuted with reasonable diligence extends to the water right of a municipal water supplier that has been or is identified to meet existing or reasonably anticipated future needs. It must be so identified in a water system plan approved by the DOH or an approved coordinated water system plan. Other means of prosecuting a water right with reasonable diligence are not precluded, including installed system capacity. Municipal water suppliers have a minimum of 50 years from the latest approval of such a plan to put to use the water rights identified as being for reasonably anticipated future use. They may have additional time based on the particular facts and circumstances involved. (Section 4.) The place of use for a water right held by a municipal water supplier is the water service area or areas in the municipal water supplier's approved water system plan or approved coordinated water system plan, as either plan may be amended from time to time. (Section 5.)*

*A water right certificate previously issued and held by a municipal water supplier is a right in good standing if the water has been applied to beneficial use or is to be used for reasonably anticipated future needs. The DOE cannot rescind or reissue any water right certificate without the consent of the water right holder except as authorized at the conclusion of a general adjudication proceeding for water rights. This prohibition does not apply to correcting ministerial errors in a water right certificate, nor may it be construed as prohibiting the DOE from issuing a modified water right certificate following a transfer, change, or amendment of a water right when the water right holder applies to the DOE for such a modification in the right. (Section 3.)*

*For the purposes of the Surface Water Code, the Ground Water Code and the water right claims and relinquishment laws, a "municipal water supplier" is an entity that owns or operates a public water system for wholesale or retail service and is either:*

- a municipal corporation; or*
- entitled or obligated to serve existing and additional customers and uses within one or more approved water service areas to the extent such customers and uses are allowed under an applicable land use plan, and has an water system plan approved by the DOH that includes supplies of water for domestic use, commercial use, and use by publicly owned institutions or structures. (Section 2.)*

*The DOH must adopt as rules conservation and water system efficiency standards and safeguards that apply to each municipal water supplier with at least 1000 service connections. (Section 6.)*

***Appropriation:*** None.

***Fiscal Note:*** Requested on February 11, 2001.

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