

# SENATE BILL REPORT

## E2SHB 1338

---

---

As Reported By Senate Committee On:  
Natural Resources, Energy & Water, April 4, 2003

**Title:** An act relating to certainty and flexibility of municipal water rights and efficient use of water.

**Brief Description:** Providing additional certainty for municipal water rights.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Linville, Kirby, Lantz, Rockefeller, Shabro, Jarrett, Grant, Quall, Hunt, Delvin, Wallace, Woods, Benson, Morris and Conway; by request of Governor Locke).

**Brief History:**

**Committee Activity:** Natural Resources, Energy & Water: 3/26/03, 4/4/03 [DPA, DNP].

---

### SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

---

**Majority Report:** Do pass as amended.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Hale, Hargrove, Honeyford and Oke.

**Minority Report:** Do not pass.

Signed by Senators Fraser and Regala.

**Staff:** Sam Thompson (786-7413)

**Background:** Relinquishment. A water right holder who abandons a right or fails to beneficially use it or a part of it for five successive years must relinquish the right or portion not used unless the nonuse is exempted from relinquishment or is the result of certain specified "sufficient causes."

Municipal Water Rights. Historically, the state issued many water right certificates to municipal water suppliers after the suppliers constructed their main water withdrawal and distribution works but before they actually put all of their allotted water to beneficial use. Under this "pumps and pipes" concept, municipal water suppliers were allowed to develop their allotted use over time without risking relinquishment of water rights.

In a 1998 decision involving a private developer's water right, the state Supreme Court held that a final water right certificate could not be issued for water that had not actually been put to beneficial use. While the court expressly declined to address issues concerning municipal water suppliers, the Department of Ecology (DOE) nonetheless concluded (in a draft policy circulated and subsequently withdrawn) that the court's holdings applied to all water rights, including municipal water rights.

Water System Plans. State Board of Health administrative rules require certain public water systems to submit water system plans or small water system management programs to the Department of Health for review and approval. Coordinated water system plans must be developed for critical water supply areas.

**Summary of Amended Bill:** Municipal water rights are protected from relinquishment through nonuse and are allowed to expand up to authorized annual quantity limits as demand within a service area grows. The Department of Health (DOH) must study water conservation efforts.

Protection of Municipal Water Rights from Relinquishment. The purpose of use of water rights held by a municipal water supplier for a public water system is "municipal water supply purposes," defined as any beneficial use for which water is or is anticipated to be provided by a municipal water supplier, subject to existing requirements to change rights that are not municipal water supply purpose rights to municipal water supply purposes.

"Municipal water suppliers" are defined as:

- Purveyors (public and private owners or operators of public water systems) having state-approved water system plans or small water system management programs and owning or operating group A water systems (systems with 15 or more service connections or systems serving an average of 25 or more people per day for 60 or more days a year) that are entitled or obligated to serve existing and additional customers and uses within an approved water service area, to the extent allowed under applicable land use plans.
- Irrigation districts.
- Counties appointed as receivers of failing water systems or approved as satellite system management agencies, or cities, towns or counties holding rights for use in their own governmental or proprietary operations.

Expansion of Municipal Water Rights. The maximum number of service connections, maximum population to be served, or size or location of place of use, as described on a municipal water right application, permit, certificate, or claim, may not limit exercise of the municipal water right if an annual quantity limit can be determined from the permit, certificate, or claim. However, if a water system plan or small water system management program must be approved for a public water system by the state, the number of service connections or population served under the water right may expand only when the system complies with its plan or program.

Place of use for a public water system is the larger of the place of use described in the water right certificate or the service area described in the state-approved water system plan or small water system management program. However, in order to qualify for this definition of place of use, a public water system with 10,000 or more service connections must incorporate a conservation element within its plan or program. If a public water system can demonstrate, through source and service metering, that "unaccounted-for water" does not exceed 15 percent of water used within the system, it must include regular system leak detection analysis and one of the following additional conservation measures in its plan or program: consumer

education, conservation-promoting billing, or low-flow plumbing retrofitting. If a public water system is not completely source and service metered or "unaccounted-for water" exceeds 15 percent of water used within the system, the supplier must include all of the foregoing conservation measures in its plan or program. "Unaccounted-for water" in these limitations does not include water delivered to metered customers or water for system flushing and maintenance, fire flow, or fire training.

The Department of Ecology must modify water right records as necessary when records come up for review.

DOH Water Conservation Study. DOH, in cooperation with the Water Supply Advisory Committee, will examine the effectiveness of water conservation efforts throughout the state and will report to the Legislature on proposed legislation or rule changes that would encourage cost-effective conservation.

The bill is null and void if not funded in the omnibus budget.

**Amended Bill Compared to Second Substitute Bill:** The amendment: (1) revises definitions of "municipal water supply purposes" and "municipal water supplier," specifically including irrigation districts within the latter definition; (2) expressly provides that water right change procedures apply when a nonmunicipal water right is changed to a municipal water right; (3) expands the definition of "place of use" of a public water system to be the larger of the place of use specified in the applicable water right certificate or the service area described in the system's state-approved water system plan or small water system management program; (4) deletes provisions concerning water conservation and planning requirements but imposes other water conservation requirements on municipal water suppliers with 10,000 or more service connections to enable them to qualify for the expansive "place of use" definition; (5) mandates a water conservation study by the Department of Health; and (6) provides that the bill is null and void if not funded in the omnibus budget.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** (Original bill) This bill protects municipal water rights from relinquishment while making certain that water rights within a watershed are not inconsistent; the bill appropriately clarifies that place of use for municipal water supply is the service area approved by the Department of Health in a water supply plan; the bill appropriately imposes conservation and planning requirements before inchoate water rights can be put to use; the bill appropriately provides some flexibility to municipal water rights while giving them greater certainty.

**Testimony Against:** (Original bill) The definition of "municipal water supplier," "municipal water supply," and "governmental or governmental proprietary purposes" are too broad, inappropriately including certain entities or activities; conservation measures mandated by the bill are unfair because they are too onerous and because municipal water suppliers are currently promoting and achieving reduction of water use; conservation measures imposed

by the bill are not strict enough; the bill will diminish instream flows, impairing Native American treaty rights. Concerns: the bill should be amended to clarify that small public water systems will not be obligated to adopt expensive water system plans to qualify for protection from relinquishment, but can continue to adopt less expensive small water system management programs.

**Testified:** Representative Linville (pro); Bill Hahn, PUD Association Water Committee, Kitsap PUD (pro w/concerns); Doug Levy, Cities of Everett and Kent (pro w/concerns); Josh Baldi, Washington Environmental Council (neutral); Dawn Vyvyan, Yakama Nation (con); Scott Hazlegrove, Washington Association of Sewer and Water Districts (concerns); Kathleen Collins, Washington Water Policy Alliance (pro w/suggested amendments); Jim Waldo, Governor's Water Advisor (concerns); Paul Parker, Washington State Association of Counties (pro w/suggested amendments); Steve Robinson, Northwest Indian Fisheries Commission (con); Tom Pors, City of North Bend and Lakewood Water District (concerns); Steve Wehrly, Muckleshoot Tribe (con); Bob Mack, Cities of Tacoma, Spokane and Bellevue (pro w/concerns); Ralph Ferguson, Camano Water Systems Association (pro w/amendment).