

SENATE BILL REPORT

SB 5419

As Reported By Senate Committee On:
Water, Energy & Environment, February 23, 2005
Ways & Means, March 7, 2005

Title: An act relating to water permit processing.

Brief Description: Changing water permit processing provisions.

Sponsors: Senators Fraser, Rasmussen, Regala, Pridemore, Rockefeller and Kline.

Brief History:

Committee Activity: Water, Energy & Environment: 2/3/05, 2/23/05 [DPS-WM, DNP].
Ways & Means: 3/4/05, 3/7/05 [DPS(WEE), DNP, w/oRec].

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 5419 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Pridemore and Regala.

Minority Report: Do not pass.

Signed by Senators Morton, Ranking Minority Member; Hewitt and Honeyford.

Staff: Margaret King (786-7416)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5419 as recommended by Committee on Water, Energy & Environment be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Doumit, Vice Chair; Fraser, Vice Chair; Fairley, Kohl-Welles, Pridemore, Rasmussen, Regala, Rockefeller and Thibaudeau.

Minority Report: Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Hewitt, Pflug, Roach and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Brandland and Parlette.

Staff: Brian Sims (786-7431)

Background: The process for acquiring a right to the beneficial use of water is initiated by the submission to the Department of Ecology (Department) of an application for a permit to appropriate water. Public notice must be published by an applicant as directed by the

Department at the time a proper application is filed. When an application is filed that complies with the statutory requirements, the Department is charged with the duty of investigating the application and determining what water, if any, is available and to what beneficial uses the water can be applied. The Department is required to make and include in the record written findings of fact on all matters it investigates.

In 1993, a Legislative Water Right Fee Task Force recommended a number of statutory changes to improve efficiency in the water right permit process. One of the issues addressed by the task force was the failure of the current application form to provide sufficient information in all cases to support findings of fact and a final determination by the Department of Ecology.

Summary of Substitute Bill: Water right permit applicants are required to provide such information as the Department of Ecology may require, in addition to a completed application form, and satisfy the protocols set by the Department for obtaining and providing that information. Required information that the Department may require to support a water right application must be directly related to the application under consideration. If the required information has been provided and the protocols satisfied, the department must review the information and may verify its accuracy.

An incomplete application form must be returned to an applicant and the date and the reason for the return shall be noted in the department's records and in a letter returning the form. The language requiring the department to give priority protection for incomplete applications completed within a reasonable time is removed.

The applicant is required to include location, annual or instantaneous quantity proposed to be withdrawn or diverted, source, and purpose of use in the notice of permit application and explain that a protest of the application must be filed with the Department within 30 days of the last publication of notice.

The Department is required to make available to the public, at least 45 days before issuing a water rights permit, a summary of the "record of examination" and the proposed permit. The Department is required to notify interested federally recognized Indian tribes of any permits issued.

Substitute Bill Compared to Original Bill: Reduces the time for public comment on the summary of the record of examination from 60 days to 45 days and removes language requiring the department to consider the comments and the record.

Clarifies that all tribes that have requested notice shall receive notice of issuance of permits.

Removes requirement that the department return the application fee when the application is not complete.

Clarifies that the quantity of water to be diverted that must be provided in the public notice may be either annual or instantaneous quantity.

Makes a technical correction for misspelled word.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Testimony For: Additional information required for applications is needed to support findings of fact and final determinations by the Department. Need accountability and the public interest should be protected.

Testimony Against: It is unclear what information or protocols the Department would be requiring. A new comment period will increase time for processing applications and allow persons with no legal standing to comment. Time of vesting of the application will be uncertain.

Who Testified: PRO: Senator Fraser, prime sponsor; Joe Stohr, Department of Ecology; Josh Baldi, WA Enviro Council; Craig Engelking, Sierra Club.

CON: John Stuhlmiller, WA Farm Bureau; Kathleen Collins, WA Water Policy Alliance; Kristen Sawin, AWB; Jack Field.