
**Agriculture & Natural Resources
Committee**

SSB 5298

Brief Description: Concerning the diversion of certain municipal waters.

Sponsors: Senate Committee on Agriculture, Water & Rural Economic Development (originally sponsored by Senators Ericksen, Hatfield, Honeyford and Warnick).

Brief Summary of Substitute Bill

- Makes a legislative finding that it is in the overriding considerations of the public interest for the Department of Ecology to make certain uninterruptable municipal water supplies available for appropriation regardless of whether or not instream flows have been established for the applicable water body.

Hearing Date: 3/24/15

Staff: Jason Callahan (786-7117).

Background:

Instream Flows.

The Department of Ecology (Department) has the authority to adopt rules establishing a minimum water flow for stream, lakes, or other public water bodies for the purposes of protecting fish, game, birds, and the recreational and aesthetic values of the waterways. These levels, commonly called "instream flows", essentially function as water rights with a priority date set at the adoption date of the corresponding rule.

Per statute, the instream flow cannot affect an existing water right with a senior time priority date. The Department may not allow any subsequent water withdrawals with a junior priority date to the instream flow that conflicts with the established flow level unless the withdrawals clearly serves to satisfy an overriding considerations of the public interest. In 2013 the state

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Supreme Court found the exception for withdrawals that effect an instream flow to address an overriding considerations of the public interest is narrow and requires extraordinary circumstances before the minimum flow water right can be impaired.

As of today, there is an instream flow rule in place for almost half of the state's 64 identified watersheds.

Water Right Changes.

In general, a water right permit is issued for the purpose of developing the beneficial use for a water right. Once that use has been developed in accordance with the provisions of the permit, a water right certificate is issued for the use. Both the surface water code and the groundwater code allow for "transfers" of rights through the approval of transfers, changes, or amendments regarding water rights.

A change in the place of use, point of diversion, or purpose of use of a water right to allow the irrigation of additional acreage or the addition of new uses may be permitted if the change results in no increase in the annual consumptive quantity of water used under the water right. The "annual consumptive quantity" is the estimated or actual annual amount of water diverted under the water right as that amount is reduced by the estimated annual amount of return flows, averaged over the most recent five-year period of continuous beneficial use of the water right. All change applications must be filed with, and approved by, the Department. The Department may approve the application, after providing public notice, if the change appears to not injure or serve as a detriment to any other water rights.

Summary of Bill:

A legislative finding is made that it is in the overriding considerations of the public interest for the Department to make certain uninterrupted municipal water supplies available for appropriation regardless of whether or not instream flows have been established for the applicable water body. This finding of overriding considerations of the public interest only applies under specific conditions.

The first condition is that the diverting municipal water supplier must also discharge an amount of foreign water no more than one mile downstream from the withdraw point in the same water body. The amount of foreign water discharged must be equivalent to the amount of water withdrawn as measured on both an annual basis and as an instantaneous rate. Foreign water is water that does not naturally contribute as a source of water supply for the water basin where it is being discharged.

The other conditions required to be satisfied before a finding of the overriding considerations of the public interest can be made include a requirement that the water diversion represents no more than 0.1 percent of any minimum instream flows and that the introduction of foreign water complies with all water quality regulations. Finally, the total municipal water supply diverted and the total foreign water introduced must be reported to the Department no less than four times per year.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.