

SENATE BILL REPORT

SB 5965

As Reported by Senate Committee On:
Agriculture, Water & Rural Economic Development, February 19, 2015

Title: An act relating to evaluating mitigation options for impacts to base flows and minimum instream flows.

Brief Description: Evaluating mitigation options for impacts to base flows and minimum instream flows.

Sponsors: Senators Warnick, Hatfield, Pearson, Hobbs and Bailey.

Brief History:

Committee Activity: Agriculture, Water & Rural Economic Development: 2/17/15, 2/19/15 [DPS].

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5965 be substituted therefor, and the substitute bill do pass.

Signed by Senators Warnick, Chair; Danel, Vice Chair; Hatfield, Ranking Minority Member; Hobbs and Honeyford.

Staff: Diane Smith (786-7410)

Background: When base flows and in-stream flows are established at levels that curtail access to water by landowners using permit-exempt wells, economic opportunities in rural areas are inhibited. A range of mitigation choices may exist that is broader than that currently made available to landowners.

A recent line of court cases, *Swinomish v. DOE*, 178 Wn.2d 571 (2013) being the most prominent, has been applied to curtail permit-exempt well usage in the Skagit River basin.

Summary of Bill (Recommended Substitute): Using its existing appropriations, the Department of Ecology (Ecology) must submit a finished report to the Legislature by November 1, 2015. Ecology must post on its website the draft report at least 21 days before its completion.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The report must include various specific aspects of mitigation techniques Ecology has used over the last ten years, including out-of-kind techniques and methodologies, to mitigate the impacts of permit-exempt groundwater withdrawals on base flows and minimum in-stream flows. The report must include the effectiveness of each type of technique, an evaluation of all options that may be available in the upper and lower Skagit River basin, and the advantages and disadvantages of each. There must be an analysis of whether mitigation of new permit-exempt wells actually results in increased base flows. There must also be a survey of in-kind flow-enhancement strategies other than regulation of permit-exempt wells.

Further, the report must recommend legislative action to ensure reasonable mitigation options, including in-kind techniques, are available to landowners required to mitigate for the impacts of permit-exempt groundwater withdrawals on base and minimum in-stream flows.

Ecology must consult with the Office of the Attorney General in preparing the report.

EFFECT OF CHANGES MADE BY AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT COMMITTEE (Recommended Substitute): Clarifies that Ecology must prepare the report regardless of an appropriation expressly for it; adds a requirement that a draft report be made available for public review on Ecology's website for at least 21 days before the report is completed; adds a requirement to review instream flow-setting methodologies; adds a requirement for analysis of whether mitigation of new permit-exempt groundwater results in increased base flows; adds a requirement for a survey of in-kind flow enhancement strategies other than regulation of permit-exempt groundwater withdrawals; and includes all mitigation options, not just out-of-kind, in the analysis specific to the Skagit basin.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: This bill is the result of a number of bills concerning instream flow issues. It will provide us with our options to help with issues arising in specific areas of the state. The November 1, 2015, date is set so as to have time to evaluate the report before next session. This bill results in less uncertainty and a more standardized range of options. Out-of-stream options engender some concern that a stakeholder group could allay. This helps continue the discussion after the Swinomish decision in late 2013: how can Ecology balance the competing interests of the water resources act. Water-for-water mitigation is a challenge to achieve within the same watershed. More options are essential for success.

OTHER: We are against several other bills in committee that weaken protections for instream flows in the Skagit. We do need several options because it is not a one-size-fits-all solution. We are very in favor of the concept but want to see robust scientific examination of

out-of-kind mitigation. There is a worry about the shoestring budget that we will get the scientific rigor required.

Persons Testifying: PRO: Senator Warnick, prime Sponsor; Cindy Alia, Citizens' Alliance for Property Rights; David Christensen, Ecology.

OTHER: Davor Gjurasic, Swinomish Tribe; Bruce Wishart, Sierra Club, Center for Environmental Law and Policy.