

SENATE BILL REPORT

ESB 6589

As Passed Senate, February 16, 2016

Title: An act relating to a feasibility study to examine whether water storage would provide noninterruptible water resources to users of permit exempt wells.

Brief Description: Concerning a feasibility study to examine whether water storage would provide noninterruptible water resources to users of permit exempt wells.

Sponsors: Senators Bailey, Pearson and Warnick.

Brief History:

Committee Activity: Agriculture, Water & Rural Economic Development: 2/02/16, 2/04/16 [DP].

Passed Senate: 2/16/16, 49-0.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Warnick, Chair; Dansel, Vice Chair; Takko, Ranking Member; Hobbs and Honeyford.

Staff: Diane Smith (786-7410)

Background: Generally, the Department of Ecology (Ecology) must base water allocation among potential uses and users on the principle of securing maximum net benefits for the people of the state. Ecology must also set minimum instream flows to protect instream resources - fish and wildlife habitat, and water quality.

Ecology establishes instream flow rules for the state's major river basins and typically bases rules on the stream flows needed to support healthy fish populations. Ecology may authorize withdrawals of water conflicting with base flows necessary to preserve instream values only in situations where it is clear that overriding considerations of the public interest will be served.

In April 2001, the Skagit River Basin Instream Resources Protection Program Rule - WAC 173-503 - established minimum instream flows throughout the basin in water resource inventory areas (WRIA) 3 and 4. Eight businesses and 475 homes have relied on Skagit

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reservations - finite water amounts set aside for specific future uses - for their water supplies since 2001.

In 2006, Ecology found that limited reservations would not substantially harm fish populations and amended the rule to establish reservations of surface and groundwater for future out-of-stream uses. The reservations provided uninterrupted, or year-round, water supplies for new agricultural, residential, commercial or industrial, and livestock uses across 25 sub basins.

In October 2013, the Washington Supreme Court invalidated the 2006 amendments, holding that Ecology could not set aside water reservations through water management rules where it had previously set aside water to support stream flows for fish. Since the court decision, Ecology has exercised its enforcement discretion not to curtail water use of homes and businesses that have relied on the 2006 reservations.

Summary of Engrossed Bill: Ecology, in cooperation with the state Department of Health, Skagit county, Tribes, and non-municipally owned public water systems in Skagit county, must study whether use of effectively sized water storage to recharge the Skagit river basin is feasible for providing year-round water to users of permit exempt wells.

Ecology must report the study's findings to the Legislature by December 1, 2016.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The people in the Skagit who legally drilled their wells and now cannot use them, cannot sell their homes because no financing is available, and have lost up to 90 percent of the value of their land. Likewise, the county has lost that tax base. Since instream flows are jeopardized only at certain times of the year, it seems reasonable to explore whether storage of water for release at those times would be a way to recharge the system so that it provides instream flows and provides year-around water in permit-exempt wells. It is strongly suggested that tribes be included in the study.

CON: Participating in this study is not in the Governor's budget. DOE is willing to work on the geographical scope of the bill since this could be a useful approach.

OTHER: Tribes in the Skagit should be included in the bill

Persons Testifying: PRO: Senator Bailey, prime sponsor; Glen Smith, Washington State Ground Water Association; Bruce Wishart, CELP / Sierra Club.

CON: Tom Loranger, Department of Ecology; Jeanne Cushman, Squaxin Island Tribe and Port Gamble S'Klallam Tribe.

OTHER: Davor Gjurasic, Swinomish Tribal Community of Indians.

Persons Signed In To Testify But Not Testifying: No one.