

SENATE BILL REPORT

SB 5789

As of February 22, 2017

Title: An act relating to considering the full hydrologic cycle in the review and approval process of new water uses.

Brief Description: Considering the full hydrologic cycle in the review and approval process of new water uses.

Sponsors: Senators Bailey, Pearson and Ericksen.

Brief History:

Committee Activity: Agriculture, Water, Trade & Economic Development: 2/16/17, 2/16/17 [DPS, DNP, w/oRec].

Ways & Means: 2/22/17.

Brief Summary of Bill

- Requires the Department of Ecology, when evaluating an application for a groundwater right, to take into consideration changes in land use that may result in any recharge of groundwater.
- Requires a county or city take the full hydrologic cycle into account, including development and land use changes that may result in a recharge of groundwater, when adopting their comprehensive plan under the Growth Management Act.

SENATE COMMITTEE ON AGRICULTURE, WATER, TRADE & ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5789 be substituted therefor, and the substitute bill do pass.

Signed by Senators Warnick, Chair; Hawkins, Vice Chair; Brown, Honeyford, Pearson and Short.

Minority Report: Do not pass.

Signed by Senator Wellman, Assistant Ranking Minority Member.

Minority Report: That it be referred without recommendation.

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.

Signed by Senator Takko.

Staff: Karen Epps (786-7424)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Jed Herman (786-7346)

Background: Water Rights. Washington operates under a water right permit system. With certain exceptions, new rights to use surface or ground water must be established according to the permit system. Exemptions include any withdrawal of public groundwater for stock watering purposes, for watering a lawn, or for a noncommercial garden less than one half an acre. Single or group domestic uses or industrial purposes not exceeding 5000 gallons a day are also exempt.

The Department of Ecology (Ecology) must consider a four-part test when deciding whether to issue a new water right, specifically whether: (1) water is available, (2) a beneficial use of water would be made, (3) granting the right would impair existing rights, and (4) the proposed use would detrimentally affect the public welfare. If an application passes this test, Ecology issues a permit which establishes a time table for constructing the infrastructure to access the water and for putting water to beneficial use. When the conditions of the permit are satisfied, Ecology issues a water right certificate.

Growth Management Act (GMA). The GMA is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, GMA establishes land use designation and environmental protection requirements for all Washington counties and cities, and a significantly wider array of planning duties for the 28 counties and the cities within them that fully plan under GMA. All counties and cities must designate and protect critical areas and agricultural lands, forest lands, and mineral resources lands that have long-term significance for commercial production. These protection requirements obligate local governments, using the best available science, to adopt development regulations, also known as critical areas ordinances, that comply with specified criteria.

GMA directs counties and cities that fully plan under GMA to adopt internally consistent comprehensive plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans must address specified planning elements, including a land use element and a rural element, each of which is a subset of a comprehensive plan. The land use element must include population densities, building densities, and estimates of future population growth. The land use element must also provide for protection of the quality and quantity of groundwater used for public water supplies. The rural element must include measures that apply to rural development and protect the rural character of the area by, among other things, protecting critical areas and surface and groundwater resources.

Summary of Bill (First Substitute): Ecology must, when evaluating an application for a groundwater right or an amendment to a groundwater right take into consideration changes in land use that may result in any recharge of groundwater. Ecology's consideration must

extend to any increased water supply that results from changes in land use that may result in any recharge of groundwater.

The comprehensive plan of a county or city must take the full hydrologic cycle into account, including development and land use changes that may result in a recharge of groundwater, when providing for the protection of the quality and quantity of groundwater used for public water supplies in the land use element portion of the plan. Under the rural element of the plan, a county or city must adopt measures to protect critical areas and surface and groundwater resources to the extent that such measures take into account the full hydrologic cycle, including development and land use changes that result in groundwater recharge.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on First Substitute (Agriculture, Water, Trade & Economic Development): PRO: There is a serious issue related to water access in the state. Based on some studies, any domestic water use was de minimus and everything would recharge in domestic water use. This bill requires that, when land is developed or water is permitted, there needs to be consideration around the hydrology of the area. This bill mirrors what can be obtained on the ground and underground by implementing the full hydrologic cycle when properly developing rural properties. There have already been discussions with counties about implementing the concepts described in this bill. Developmental land use changes that consist of the removal of trees and vegetation and the onsite capturing and returning of water to a nearby aquifer make great sense on a property by property basis. Too much emphasis is being placed on the consumption of water without taking into consideration the benefits of water recharge. Recognizing and implementing the land use changes discussed in this bill would greatly enhance the use of de minimus water tools that have long been missing from Ecology's tool box.

CON: As written, the bill reflects a profound misunderstanding of the hydrologic cycle and the tree's role in the hydrologic cycle. Recharge of aquifers occurs in areas where there is permeable soils and gravels that allow water to trickle down to the aquifer over time. The language in this bill implies that trees disrupt that process but that is simply not the case. Trees and other vegetation capture the water, hold that water in storage, and then allow the water to trickle down and get into the aquifer. Areas with trees increase recharge into aquifers. There is a problem with the premise of the bill which is if trees are removed and conduct development, there will be more recharge of aquifers. When trees are removed and development occurs, soil is compacted and it is more difficult for water to recharge aquifers. The premise of this bill is incorrect.

OTHER: This bill puts forth creative ideas and solutions to try to address the challenges of water resource management and rural water supply. There are concerns about the bill as it relates to how the bill would work in practice. Evaluating the full impact of development

would significantly complicate the analysis done on water right permit applications. This bill would impact the current large backlog of water right applications and could create a longer backlog. Ecology does not have the information to understand the full impacts and could be forced to make generalized assumptions that could result in uncertainty for permit applicants.

Persons Testifying (Agriculture, Water, Trade & Economic Development): PRO: Senator Barbara Bailey, Prime Sponsor; Glen Smith, WA State Ground Water Assoc.

CON: Anne Savery, Tulalip Tribes; Bruce Wishart, CELP / Sierra Club.

OTHER: David Christensen, Ecology.

Persons Signed In To Testify But Not Testifying (Agriculture, Water, Trade & Economic Development): No one.