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**Agriculture & Natural Resources  
Committee**

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**HB 2740**

**Brief Description:** Ensuring that water is available for permit exempt and instream uses.

**Sponsors:** Representatives Fitzgibbon, Springer and Tharinger.

**Brief Summary of Bill**

- Establishes that evidence of potable water for a building permit must meet certain requirements based on the Water Resource Inventory Area (WRIA) in which the building permit is sought.
- Provides that an applicant's compliance with the permit-exempt groundwater statute and with applicable instream flow rules is sufficient in determining whether appropriate provisions for water supply for a subdivision have been made.
- Establishes that a county or city may rely on or refer to applicable minimum instream flow rules adopted by the Department of Ecology (Ecology) for purposes of complying with the Growth Management Act's requirement relating to the protection of water resources.
- Requires that Ecology establish watershed restoration and enhancement committees and adopt watershed restoration and enhancement plans in certain WRIsAs.
- Authorizes the issuance of \$200 million in bonds to fund watershed restoration and enhancement projects.

**Hearing Date:** 1/16/18

**Staff:** Robert Hatfield (786-7117).

**Background:**

[Growth Management Act - Introduction.](#)

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*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 Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 29 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA.

The GMA directs jurisdictions that fully plan under the GMA to adopt internally consistent comprehensive land use plans that are generalized, coordinated land use policy statements of the governing body. Comprehensive plans are implemented through locally adopted development regulations, both of which are subject to review and revision requirements as prescribed in the GMA.

#### Growth Management Act - Planning Goals.

For the purpose of guiding the development of comprehensive plans and development regulations, counties and cities must consider various planning goals set forth in statute. These planning goals include protecting the environment, enhancing the state's high quality of life, including air and water quality, and the availability of water.

#### Growth Management Act - Rural Character.

The rural element of a comprehensive plan must allow for rural development, forestry, and agriculture in rural areas, and such rural development must be consistent with rural character. Rural character refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan that, among other things, are consistent with the protection of natural surface water flows, and groundwater and surface water recharge, and discharge areas. Development regulations for rural areas must protect the rural character of the area by, among other things, protecting surface water and groundwater resources.

#### Planning Enabling Act.

Enacted in 1959, the Planning Enabling Act (PEA) is a precursor to the GMA that authorizes counties and regions in the state to engage in comprehensive land use and development planning. Under the PEA, counties are authorized to, among other things, adopt comprehensive land use plans to guide development. Comprehensive plans adopted under the PEA must provide for the protection of the quality and quantity of groundwater used for public water supplies.

#### Building Permits and Subdivision Approvals.

Under the State Building Code, an applicant for a building permit for a building that requires potable water must provide evidence of an adequate water supply for the intended use of the building. The evidence may be in the form of a water right permit from the Department of Ecology (Ecology), a letter from an approved water purveyor stating the purveyor's ability to provide water, or other verification of the existence of an adequate water supply.

The process by which land divisions, including subdivisions, dedications, and short subdivisions may occur is governed by state and local requirements. Local governments, the entities charged with receiving and determining land division proposals, must adopt associated ordinances and procedures in conforming with state requirements. In reviewing a proposed subdivision, the local government must determine whether appropriate provisions have been made for, among other things, potable water supplies.

### 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: withdrawals of public groundwater for stock watering purposes, for watering a lawn, for a noncommercial garden less than one-half of an acre, single or group domestic uses or industrial purposes, not exceeding 5,000 gallons per day.

### Water Resource Inventory Areas.

A Water Resource Inventory Area (WRIA) is, generally speaking, an area determined to be a distinct watershed. Ecology has divided the watersheds of the state into 63 WRIsAs. Each WRIA is identified by a number.

### Instream Flow Rules.

Ecology has the authority to adopt rules establishing a minimum water flow for streams, lakes, or other public water bodies for the purposes of protecting fish, game, birds, and the recreational and aesthetic values of the waterways. Ecology must set minimum water flows to protect fish, game, or wildlife resources, when requested by the Department of Fish and Wildlife or if Ecology finds it necessary to protect water quality.

These minimum water flow levels, commonly called instream flows, function as water rights with a priority date set at the adoption date of the corresponding rule. Instream flows have been set in 27 WRIsAs. The instream flow cannot affect an existing water right with a senior priority date.

### **Summary of Bill:**

#### Building permits.

In water resource inventory areas (WRIsAs) where the Department of Ecology has adopted instream flow rules that explicitly regulate permit-exempt groundwater withdrawals, evidence of an adequate water supply for a building permit must be consistent with the applicable instream flow rules.

In WRIsAs where instream flow rules do not explicitly regulate permit-exempt groundwater withdrawals, evidence of an adequate water supply for a domestic-use building permit must be consistent with the watershed restoration and enhancement plan process created by the act, described below. In these WRIsAs, evidence of an adequate water supply for a commercial-use building permit may be demonstrated by submittal of a water well report without having to comply with the watershed restoration and enhancement plan process created by the act.

Additional requirements may apply to demonstrate the physical and legal existence of an adequate water supply if the application for a building permit is within: an area where water rights have been adjudicated under state law and that is subject to federal flow regulation; an area where water rights have been adjudicated under federal law and that is subject to federal flow regulation; and, WRIsAs 3 and 4 (the Upper and Lower Skagit).

In other areas of the state, physical and legal evidence of an adequate water supply for purposes of obtaining a building permit may be demonstrated by submittal of a water well report.

A properly obtained permit-exempt well in existence prior to the effective date of the act need not comply with the watershed restoration and enhancement plan process created by the act, and instead must be considered under the legal requirements for groundwater withdrawals and building permits as they existed on October 5, 2016.

Growth Management Act—Comprehensive Plans.

A local government is authorized to rely on or refer to instream flow rules adopted by Ecology for the purpose of satisfying the GMA's requirements related to surface and groundwater resources. Development regulations must ensure that proposed water uses are compatible with RCW 90.44.050 and with instream flow rules adopted by Ecology.

Subdivision approvals.

If a subdivision applicant intends to rely on a permit-exempt well as a source of potable water, the applicant's compliance with applicable instream flow rules and with RCW 90.44.050 is sufficient for determining whether appropriate provisions for water have been made for the subdivision.

A properly obtained permit-exempt well in existence prior to the effective date of the act need not comply with the watershed restoration and enhancement plan process created by the act, and instead must be considered under the legal requirements for groundwater withdrawals and building permits as they existed on October 5, 2016.

Watershed Restoration and Enhancement Committees and Plans.

Unless requirements are otherwise specified in an instream flow rule, impacts and impairments to instream flows are authorized for new permit-exempt domestic and commercial groundwater withdrawals by complying with the watershed restoration and enhancement plan process created by the act.

Ecology must establish and chair watershed restoration and enhancement committees in the following WRAs: 1 (Whatcom); 7 (Snohomish); 8 (Cedar-Sammamish); 9 (Duwamish-Green); 10 (Puyallup-White); 11 (Nisqually); 12 (Chambers-Clover); 13 (Deschutes); 14 (Kennedy-Goldsborough); 15 (Kitsap); 22 (Lower Chehalis); 23 (Upper Chehalis); 49 (Okanogan); 55 (Little Spokane); 59 (Colville).

Representatives from the following entities must be invited to participate in each watershed restoration and enhancement committee: each federally recognized Indian tribe that has either reservation land or a usual and accustomed harvest area within the WRIA; the Department of Fish and Wildlife; each county within the WRIA, and; each city within the WRIA.

Ecology, in collaboration with the watershed restoration and enhancement committee, must prepare and adopt a watershed restoration and enhancement plan for each of the WRAs for which it has established a watershed restoration and enhancement committee. A watershed restoration and enhancement plan must be approved by all members of the watershed restoration and enhancement committee, except as described below, before it may be adopted.

The watershed restoration and enhancement plan should include recommendations for projects and actions that will measure, protect, and enhance instream resources, and improve watershed functions that support the recovery of threatened and endangered salmonids. Qualifying projects must be specifically designed to enhance streamflows and not result in negative impacts to

ecological functions or critical habitat. At a minimum, the plan must include the actions that the committee determines to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic and commercial water use.

The plan may include projects that protect or improve instream resources without replacing the consumptive quantity of water where such projects are in addition to the actions that the committee determines to be necessary to offset potential consumptive impacts to instream flows associated with permit-exempt domestic water use. The plan may also include: recommendations for modifications to the state watershed restoration and enhancement fees established by the act; standards for water use quantities that are different than those established by the act; conservation measures to be adopted by local or state permitting authorities, and; other approaches to managing water resources.

Before the plan may be adopted, Ecology must make a determination that the actions identified in the plan will result in a net ecological benefit to the WRIA after accounting for projected new uses of water over the subsequent 20 years.

After a plan has been adopted, Ecology must evaluate the plan and initiate rule-making, if necessary, to incorporate recommendations made in the plan.

If a watershed restoration and enhancement committee fails to approve a plan by the timeline specified in the act, the director of Ecology must submit the final draft plan to the Salmon Recovery Funding Board and request that the Board provide a technical review of the plan and provide recommendations to the director of Ecology. The director must consider the recommendations and may amend the plan without committee approval. In such an instance, Ecology must initiate rule-making within six months to incorporate recommendations into rules. The rules must be adopted within two years of initiation.

For purposes of maximum water use quantities, and the timelines by which the watershed restoration and enhancement plans must be adopted or submitted to the Salmon Recovery Funding Board, the WRIAs in which Ecology must establish a watershed restoration and enhancement committee are organized into the following tiers:

- Tier 1: 1 (Nooksack); 7 (Snohomish); 15 (Kitsap); 8 (Cedar-Sammamish); and 14 (Kennedy-Goldsborough);
- Tier 2: 23 (Upper Chehalis); 11 (Nisqually); 10 (Puyallup-White); 9 (Duwamish-Green); and 13 (Deschutes); and
- Tier 3: 49 (Okanogan); 22 (Lower Chehalis); 55 (Little Spokane); 12 (Chambers-Clover); and 59 (Colville).

The deadline by which a watershed restoration and enhancement plan must be adopted, and the deadline by which a watershed restoration and enhancement plan must be submitted to the Salmon Recovery Funding Board if it has not been adopted, is as follows:

- Tier 1: June 30, 2021;
- Tier 2: June 30, 2023; and
- Tier 3: June 30, 2025.

In order to rely on the provisions of the act, a local permitting authority issuing a building permit or approving a subdivision must do the following:

- Record relevant groundwater withdrawals on the property title;
- Collect applicable fees, as described below;
- Report to Ecology the number of building permits and subdivision approvals issued in reliance on the watershed restoration and enhancement plan process created by the act;
- Annually remit to Ecology all state watershed restoration and enhancement fees collected; and
- Require certain water use restrictions and conditions, as described below.

An applicant for a building permit or subdivision approval pursuant to the watershed restoration and enhancement plan process created by the act must comply with the following requirements:

- An applicant must pay a state watershed restoration and enhancement fee, described below, and may be required to pay a local watershed restoration and enhancement fee if the local permitting authority adopts one pursuant to authority created in the act, described below;
- An applicant may obtain approval for a single domestic indoor use only, with a maximum withdrawal as follows:
  - Tier 1: 350 gallons per day;
  - Tier 2: 600 gallons per day; and
  - Tier 3: 1,000 gallons per day.

An applicant must manage stormwater runoff on-site to the extent practicable by maximizing infiltration.

Ecology must initiate rule-making for the purpose of adopting instream flows in at least one WRIA every four years in which instream flows have not been adopted. Rules may include updates to the state watershed restoration and enhancement fees established under the act.

Ecology must submit reports to the Legislature by 2022 and by 2027 that include the following elements, among others: progress toward adopting watershed restoration and enhancement plans; an assessment of streamflow restoration and enhancement benefits from projects implemented pursuant to watershed restoration and enhancement plans; and the total number of new withdrawals in each WRIA authorized under this act.

A properly obtained permit-exempt well in existence prior to the effective date of the act need not comply with the watershed restoration and enhancement plan process created by the act, and instead must be considered under the legal requirements for groundwater withdrawals and building permits as they existed on October 5, 2016.

#### State and Local Watershed Restoration Enhancement Fees.

In the WRIsAs in which Ecology must establish a watershed restoration and enhancement committee, the local permitting authority must assess and remit to Ecology a \$350 state watershed restoration and enhancement fee for each new domestic-use building permit. Proceeds from the fee may be spent only in the WRIA in which the fee originated.

In addition to the state watershed restoration and enhancement fee, a permitting authority in the WRIsAs described above is authorized to assess a local watershed restoration and enhancement fee for each new domestic-use building permit. Proceeds from the fee may be spent only in the WRIA in which the fee originated.

#### Publication of Authorities Related to Groundwater Uses.

Ecology is required to compile a list of the statutes, rules, and other legal authorities, if any, that apply to groundwater withdrawals in each of the WRIAs of the state. The list must be distributed to the State Building Code Council, published in the Washington State Register, and posted on Ecology's website. Distribution must be complete by January 1, 2019.

#### Pilot Groundwater Withdrawal Metering Project.

Ecology must initiate a pilot project to measure water use from all new groundwater withdrawals in WRIA 9 (Duwamish-Green). The project must be conducted to determine the overall feasibility of measuring water use for all new groundwater withdrawals.

#### Cause of Action.

The ability of any person to pursue a cause of action for the protection of the person's water right is not affected by the act.

#### Joint Legislative Task Force.

A joint legislative task force on water supply is established to review the treatment of surface water and groundwater appropriations as they relate to instream flows and fish habitat, to develop and recommend a mitigation sequencing process and scoring system to address such appropriations, and to review the Washington Supreme Court decision in *Foster v. Department of Ecology*. Recommendations of the task force must be made by a two-thirds majority. The task force must make its recommendations to the Legislature by November 15, 2019.

Ecology must issue water right permit decisions for up to five water resource mitigation pilot projects. Out-of-kind mitigation is authorized for projects where avoidance and minimization of impacts is not reasonably attainable. The following entities are eligible to participate in the pilot projects:

- A city operating a Group A water system in Kitsap County and WRIA 15, with a population between 13,000 and 14,000;
- A city operating a Group A water system in Pierce County and WRIA 10, with a population between 9,500 and 10,500;
- A city operating a Group A water system in Thurston County and WRIA 11, with a population between 8,500 and 9,500;
- A nonprofit mutual water system operating a Group A water system in Pierce County and WRIA 12, with between 10,500 and 11,500 service connections; and
- An irrigation district located in Whatcom County and WRIA 1.

#### Creation of New Accounts.

The watershed restoration and enhancement account, the watershed restoration and enhancement taxable bond account, and the watershed restoration and enhancement bond account are created. It is the intent of the Legislature to appropriate \$200 million for projects to achieve the goals of the act until June 30, 2028.

#### Bond authorization.

The state Finance Committee is authorized to issue general obligation bonds in the sum of \$200 million in order to finance watershed restoration and enhancement projects undertaken pursuant to the act. The debt-limit general fund bond retirement account must be used for payment of the principal and interest on these bonds.

Emergency Clause - Effective Date.

The act takes effect immediately.

**Appropriation:** None.

**Fiscal Note:** Requested on January 12, 2018.

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