

HOUSE BILL REPORT

ESHB 1561

As Passed House:

February 14, 2008

Title: An act relating to the authority of a watershed management partnership to exercise powers of its forming governments.

Brief Description: Granting authority of a watershed management partnership to exercise powers of its forming governments.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives Jarrett, Clibborn, Goodman, Springer, Eddy, Rodne and Sullivan).

Brief History:

Committee Activity:

Judiciary: 2/2/07, 2/14/07 [DPS].

Floor Activity:

Passed House: 3/7/07, 75-21.

Floor Activity:

Passed House: 2/14/08, 77-17.

Brief Summary of Engrossed Substitute Bill

- Provides that a separate legal entity created by a watershed management partnership may exercise the power of eminent domain jointly with the partnership if all the public agencies comprising the partnership have the power of eminent domain.
- Requires a watershed management partnership to provide notice before exercising eminent domain authority.
- Requires a watershed management partnership exercising its authority to report to the Legislature by July 1, 2010 on (1) the status of the water system's projects, and (2) its efforts to inform and involve the public of affected areas.

HOUSE COMMITTEE ON JUDICIARY

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Lara Zarowsky (786-7123).

Background:

Watershed Management Plans

State law establishes a mechanism for conducting watershed planning through a locally initiated process. The state law process requires watershed planning to include an assessment of water supply and use in the planning area. It also requires development of strategies for future water use. Watershed planning may include elements such as water quality, habitat, and instream flow.

Watershed planning may be conducted for one watershed or for one or more Water Resource Inventory Areas (WRIAs). The WRIAs are water resource areas designated by the Department of Ecology as of January 1, 1997. Local governments initiate watershed planning by creating a planning unit and designating a lead agency to provide staff support. The Department of Ecology provides grants for organizing a planning unit, establishing work schedules, conducting assessments, studying storage opportunities, setting instream flows, developing a watershed plan, and making recommendations.

When a watershed plan is approved by a planning unit, it is submitted for approval by the legislative authorities of all counties with territory in any WRIA for which planning was conducted. To take effect, the plan must be approved by the counties after notice, public hearings, and a joint session to consider the plan.

Watershed Management Partnerships

Public agencies may enter into interlocal agreements to form a watershed management partnership to implement all or parts of a watershed management plan, including coordination and oversight of plan implementation. Watershed plans, salmon recovery plans, watershed management elements of comprehensive plans and shoreline master programs, and other types of plans are considered "watershed management plans" for these purposes.

A watershed management partnership may create a "separate legal entity" to conduct the cooperative undertaking of the partnership. Such a separate legal entity may contract indebtedness and may issue general obligation bonds.

Interlocal Cooperation Act

The Interlocal Cooperation Act allows public agencies to enter into agreements with one another for joint or cooperative action. Any power, privilege, or authority held by a public agency may be exercised jointly with one or more other public agencies having the same power, privilege, or authority.

A "public agency" for purposes of interlocal agreements includes any agency, political subdivision, or unit of local government. The term specifically includes municipal corporations, special purpose districts, local service districts, state agencies, federal agencies, recognized Indian tribes, and other states' political subdivisions.

Power of Eminent Domain

Eminent domain is the power of a government to take private property within its jurisdiction, usually with payment of just compensation to the owner of the property. Many different public and private entities have been granted the power of eminent domain for public use or for a private way of necessity.

Under the Interlocal Cooperation Act, if two or more entities with the power of eminent domain join to form a watershed management partnership, then the partnership itself will have the power of eminent domain as well. However, in such a case, the power of eminent domain may not extend to the "separate legal entity" created by a watershed management partnership. Such a separate legal entity may not be a "public agency" within the meaning of the Interlocal Cooperation Act.

Summary of Engrossed Substitute Bill:

A watershed management partnership and a separate legal entity created by it to conduct the operation of the partnership may exercise the power of eminent domain if all of the public agencies that form the partnership do themselves have the power of eminent domain.

In order to exercise this eminent domain power, a watershed management partnership or separate legal entity must be governed by a board of directors consisting entirely of elected officials from the cities and districts constituting the partnership.

A watershed management partnership or separate legal entity exercising its eminent domain authority must report to the Legislature by July 1, 2010 addressing:

- the status of any water system projects;
- the use of the watershed management partnership's authority, including its authority for the siting and construction of the system; and
- efforts to inform and involve the public of the affected areas regarding siting and construction of system facilities.

A watershed management partnership or separate legal entity must comply with statutory notice requirements that must be met before eminent domain power may be exercised, and must provide notice to the city, town or county having jurisdiction over the subject property thirty days before the partnership board authorizes condemnation.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) The Cascade Water Alliance (Alliance) is in the process of securing the water needs for many communities and needs this legislation to ensure that it can put the required pipelines in place. So far, there has been no need to use eminent domain. The bill does not expand eminent domain authority. All of the underlying entities that make up the Alliance already have the power of eminent domain.

(Opposed) The bill does not protect citizens' rights to water. Many small well owners are worried about the loss of their wells. The system favors large entities with lots of money and staff. The process for creating and implementing Water Resource Inventory Area plans is a threat to small water rights holders.

Persons Testifying: (In support) Lloyd Warren, Cascade Water Alliance.

(Opposed) Bill Clothier and Craig Gresham, Washington State Ground Water Association.

Persons Signed In To Testify But Not Testifying: Michael Gagliardo, Cascade Water Alliance; Chris McCabe, Association of Washington Business; Suzanne Sinclair, Washington Association of County Officials; Bob Mack, City of Tacoma; Kathleen Collins, Washington Water Policy Alliance; and Glen Smith, Washington State Ground Water Association.