

# HOUSE BILL REPORT

## SHB 1332

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### As Passed Legislature

**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:** House Committee on Judiciary (originally sponsored by Representatives Goodman, Anderson, Springer, Clibborn, Eddy, Simpson, Rodne, Pedersen, Hunter and Maxwell).

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 1/29/09, 2/9/09 [DPS].

##### **Floor Activity:**

Passed House: 2/23/09, 88-4.

Senate Amended.

Passed Senate: 4/17/09, 43-2.

House Refuses to Concur.

Senate Amended.

Passed Senate: 4/23/09, 43-5.

House Concurred.

Passed House: 4/25/09, 92-4.

Passed Legislature.

#### **Brief Summary of Substitute Bill**

- Provides that the separate legal entity created by a watershed management partnership to carry out the functions of the 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.
- Establishes requirements that must be met before the partnership exercises eminent domain powers and creates a process for certain cities to file and resolve claims that the partnership's activities have negative impacts on the cities' water supplies.

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#### **HOUSE COMMITTEE ON JUDICIARY**

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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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

**Staff:** Edie Adams (786-7180)

**Background:**

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.

Watershed Management Partnerships.

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 the development of strategies for future water use. Watershed planning may include elements such as water quality, habitat, and instream flow.

Under the Interlocal Cooperation Act, 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, and watershed management elements of comprehensive plans and shoreline master programs 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. The separate legal entity may contract indebtedness and may issue general obligation bonds.

Power of Eminent Domain.

Eminent domain is the power of a government to take private property within its jurisdiction 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. However, in such a case, the power of eminent domain may not extend to the separate legal entity created by a watershed management partnership. The separate legal entity may not be a "public agency" within the meaning of the Interlocal Cooperation Act.

**Summary of Substitute Bill:**

A watershed management partnership and the separate legal entity created by it to conduct the operations of the partnership may exercise the power of eminent domain if all of the public agencies that form the partnership have the power of eminent domain. The partnership or legal entity may exercise eminent domain power only for those utility purposes for which the partnership was formed and solely for providing water services to its customers.

In order to exercise this eminent domain power, the watershed management partnership must have been formed before July 1, 2006, and 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 must comply with certain requirements before exercising eminent domain powers. The partnership must comply with statutory notice requirements and must provide notice 30 days before the partnership board authorizes condemnation to the city, town, or county having jurisdiction over the subject property. The partnership must enter into an interlocal agreement with a city to allow eminent domain within that city if the city is not a member of the partnership and has water or sewer service areas within one-half mile of Lake Tapps or within 5 miles upstream from Lake Tapps along the White River.

A process is created for a city located in the Lake Tapps area, as described above, to file and resolve a claim that the partnership's Lake Tapps water supply operations have a negative impact on the city's water supplies. If a court determines that there has been a negative impact to the city, the partnership must implement a remedy acceptable to the city, and if the city and partnership do not agree on a remedy, the court must establish the terms of a remedy.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:**

(In support) This bill will help entities come together to manage resources effectively and efficiently. The bill is narrowly constructed so that it applies to only one watershed management partnership — the Cascade Water Alliance (Cascade). Cascade is a regional

water provider that is in the process of creating a water system for the central Puget Sound region that will service the growth of population and businesses in this region. Cascade is a purveyor of water, and as such it needs the power of eminent domain. Every purveyor of water in the state has eminent domain authority. In order to transfer the water, Cascade will have to build pipelines. The authority of eminent domain will enable Cascade to design an efficient and cost-effective water delivery system.

This is not an increase in eminent domain authority. Every entity in the Cascade partnership has the authority to condemn property for the purposes of establishing the water delivery system. There is accountability because the members of the board are all elected officials from the jurisdictions making up the partnership. The eminent domain authority is limited to use for utility purposes, and the partnership must follow all condemnation requirements that apply to cities and utilities and provide public notice to those jurisdictions affected.

(Opposed) The concern with this bill is not with the goals of Cascade, but with the method through which it will be acting. This bill is not necessary or prudent. All members of Cascade have eminent domain authority, so any one of those city members already has the ability to condemn property. The concern with providing eminent domain authority to the partnership is that it creates the possibility for an elected official to vote against the use of eminent domain in that official's jurisdiction, while the other members all vote to approve the condemnation. This removes the elected officials further away from accountability for the decision to exercise eminent domain.

**Persons Testifying:** (In support) Representative Goodman, prime sponsor; Tim Schellberg and Lloyd Warren, Cascade Water Alliance.

(Opposed) Dan Wood, Washington Farm Bureau.

**Persons Signed In To Testify But Not Testifying:** None.