

# SENATE BILL REPORT

## SB 5061

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As Reported by Senate Committee On:  
Agriculture, Water & Rural Economic Development, January 27, 2015

**Title:** An act relating to limiting the authority of growth management hearings boards to hear petitions challenging the regulation of permit exempt wells.

**Brief Description:** Limiting the authority of growth management hearings boards to hear petitions challenging the regulation of permit exempt wells.

**Sponsors:** Senators Honeyford, Schoesler, Warnick and Ericksen.

**Brief History:**

**Committee Activity:** Agriculture, Water & Rural Economic Development: 1/20/15, 1/27/15 [DP].

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### SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

**Majority Report:** Do pass.

Signed by Senators Warnick, Chair; Dansel, Vice Chair; Hatfield, Ranking Minority Member; Honeyford.

**Staff:** Diane Smith (786-7410)

**Background:** The requirement to address water issues is one of the Growth Management Act's (GMA's) 14 planning goals. These are non-prioritized goals that must be used exclusively for guiding the development and adoption of comprehensive plans and development regulations at the local planning level. One of these is a land use element that includes protection of water resources. There are seven mandatory elements, also including land use. This mandatory element states that comprehensive plans and development regulations must provide for protection of the quality and quantity of groundwater used for public water supplies.

GMA also establishes a seven-member quasi-judicial Growth Management Hearings Board (Board). The Board is divided into three regional panels: Central Puget Sound, Eastern and Western. It makes determinations related to the implementation of GMA based on its limited, statutory jurisdiction.

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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.*

All public groundwater withdrawals require an application and approved permit from the Department of Ecology (Ecology). Exemptions to this permit requirement, i.e. permit-exempt wells, include any withdrawal of public groundwater for stock-watering purposes, or for watering a lawn or a noncommercial garden less than one-half acre. Single or group domestic uses or industrial purposes in an amount not exceeding 5000 gallons per day are also exempt from the application and permit requirements; however, court rulings have held that group uses are only eligible to withdraw a total of 5000 gallons per day for the entire group under the applicable exemption.

Ecology has limited the uses of new permit-exempt wells. This includes agency rules applicable to portions of Skagit, Kittitas, Clallam, and Jefferson counties. These rules are individualized to each of the 62 Water Resource Inventory Areas in the state.

The Eastern Washington Board found that Kittitas County's subdivision regulations failed to protect water resources as required by the environmental planning goal of GMA and requirements governing comprehensive plans. In 2011 the Washington State Supreme Court (Court) affirmed the Eastern Washington Board's decision in *Kittitas County v. The Eastern Washington Growth Management Hearings Board*, 172 Wn.2d 144 (2011).

In reaching its decision, the Court held that because of GMA's requirements to protect water, the Eastern Washington Board has statutory authority to hear petitions that challenge whether development regulations violate the provisions of GMA that require a county to address water issues in its land use planning.

**Summary of Bill:** The Board's jurisdiction under GMA to hear petitions challenging the local regulation of permit-exempt wells is removed.

**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 court-made law that restricts or prohibits residents from using their permit-exempt wells has created hardships. This is one idea for addressing permit-exempt wells, which consume *de minimis* quantities of water. The original purpose of the Boards was to review the planning process used at the local level in implementing GMA. Boards were never intended to make substantive decisions on water law. Expertise on drinking water is found in the Department of Health and Ecology, not in county government. Expertise in water law is also found in the Pollution Control Hearings Boards, if an administrative venue is desired.

CON: The purpose of GMA is to prevent sprawl. Rural development is relevant to that purpose and permit-exempt wells are a necessary factor in facilitating rural development. Water is mentioned throughout GMA, evidencing clear intent for local permitting to acknowledge this relationship. Superior courts often do not have particular expertise in water

law while Boards do. Leaving no administrative venue for permit-exempt well contests forces these disputes into the very expensive jurisdiction of the superior courts.

**Persons Testifying:** PRO: Senator Honeyford, prime sponsor; Laura Merrill, WA State Assn. of Counties; Bill Clarke, WA REALTORS, Kittitas County; Evan Sheffels, WA Farm Bureau; Jim Halstrom, citizen

CON: Bruce Wishart, Center for Environmental Law & Policy, Sierra Club, Bryce Yadon, Futurewise.