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**Agriculture & Natural Resources  
Committee**

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**HB 1382**

**Brief Description:** Establishing a rebuttable presumption that permit-exempt groundwater withdrawals do not impair instream flows or base flows.

**Sponsors:** Representatives Shea, Taylor, Manweller, Short, Buys, Kretz, Chandler, Young, Hayes, Holy and Haler.

**Brief Summary of Bill**

- Creates a presumption, in the absence of conclusive information to the contrary, that a groundwater withdrawal from a permit-exempt well will not impair a minimum flow of a surface water body.
- Defines "conclusive information" to include, at a minimum and among other things, site-specific groundwater testing data that demonstrate a hydrological connection between the groundwater source and the surface water body whose minimum flow would be impacted by groundwater withdrawal.
- Prohibits a city, town, or county from withholding approval of a subdivision or a building permit on the basis of not having sufficient evidence to rebut the presumption of nonimpairment.
- Requires that comprehensive plans prepared pursuant to certain statutes address the protection of groundwater used for public water supplies in a manner consistent with the presumption of nonimpairment.

**Hearing Date:** 2/8/17

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

**Background:**

Water Rights.

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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.*

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 5,000 gallons per 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.

#### Beneficial Use.

A beneficial use of water includes, but is not limited to, use for domestic water, irrigation, fish, shellfish, game and other aquatic life, municipal, recreation, industrial water, generation of electric power, and navigation.

#### 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 29 watersheds plus the mainstem of the Columbia River. The instream flow cannot affect an existing water right with a senior priority date. Ecology may not allow any subsequent water withdrawals with a junior priority date to the instream flow that conflicts with the established flow level, unless the withdrawals clearly serve to satisfy an overriding consideration of the public interest.

#### 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 Ecology, a letter from an approved water purveyor stating the purveyor's ability to provide water, or another form verifying 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.

#### Comprehensive Plans.

Multiple statutes require various municipal jurisdictions to adopt comprehensive plans, including the Growth Management Act, the Planning Enabling Act, and the Optional Municipal Code. The precise elements of an individual comprehensive plan vary from plan to plan based on the statute under which it is prepared, but the general purpose of a comprehensive plan is to anticipate and guide the development of various land uses within the jurisdiction. Elements of a comprehensive plan may include a land use element, a transportation element, and a housing element, among others.

**Summary of Bill:**

Presumption of Nonimpairment.

In the absence of conclusive information to the contrary, there is a presumption that a groundwater withdrawal from a permit-exempt well will not impair a minimum flow of a surface water body.

Conclusive information sufficient to rebut the presumption includes, at a minimum, site-specific groundwater testing data that demonstrate both that there is a hydrological connection between the groundwater source and the surface water body whose minimum flow would be impacted by groundwater withdrawal, and that the withdrawal of groundwater would cause a reduction in the minimum flow or level of the surface water body that is capable of being measured with the use of professional equipment in the field.

A person proposing to withdraw permit-exempt groundwater is not required to establish or provide data that either support or rebut the presumption.

Approval of Subdivisions and Building Permits.

A city, town, or county may not withhold approval of a subdivision or building permit on the basis of not having sufficient evidence to rebut the presumption of nonimpairment.

Comprehensive Plans and the Presumption of Nonimpairment.

Comprehensive plans adopted pursuant to the Optional Municipal Code, the Planning Enabling Act, or chapter 35.63 RCW, must address the protection of groundwater used for public water supplies in a manner consistent with the presumption of nonimpairment.

**Appropriation:** None.

**Fiscal Note:** Available.

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