
**Agriculture & Natural Resources
Committee**

E2SSB 5239

Brief Description: Ensuring that water is available to support development.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Warnick, Takko, Ericksen, Becker, Walsh, Angel, Wilson, Schoesler, Honeyford, Pearson, Brown and Padden).

Brief Summary of Engrossed Second Substitute Bill

- Permits an applicant for a building permit requiring potable water to present a water well report for a permit-exempt groundwater withdrawal that is not prohibited by an instream flow rule, as evidence of an adequate water supply for the building.
- Authorizes a county or city to require a building permit applicant to connect to an existing public water system, where the existing water system is willing and able to provide safe and reliable potable water with reasonable economy and efficiency.
- Authorizes a county or city, when considering an application for a subdivision or similar development, to rely on or refer to applicable water resource management rules adopted by the Department of Ecology (Ecology) to determine if appropriate provisions have been made for potable water.
- Authorizes a county or city to rely on or refer to applicable water resource management rules adopted by Ecology in complying with the Growth Management Act's (GMA) mandate to provide for protection of the quality and quantity of groundwater used for public water supplies.
- Requires the rural element of a comprehensive plan adopted pursuant to the GMA to include measures to protect critical areas, and surface water and groundwater resources, which may include measures that rely on or refer to applicable water resource management rules adopted by Ecology.
- Requires Ecology to condition the issuance of water rights permits on mitigation of impacts to fish and fish habitat, whenever Ecology approves a water rights permit for a body of water for which Ecology has adopted an instream flow rule.

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.

- Prohibits Ecology from requiring a water user to mitigate for impacts that do not result from the water user's use of water.

Hearing Date: 3/28/17

Staff: Robert Hatfield (786-7117).

Background:

Growth Management Act–Introduction.

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. Counties that are obligated to satisfy all planning requirements of the GMA are sometimes said to be "fully planning" under 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 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 and 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.

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. When considering an application for a subdivision, the local government must determine, among other things, whether appropriate provisions have been made for potable water supplies.

Water Rights Permits.

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 of an acre. Single or group domestic uses or industrial purposes not exceeding 5,000 gallons per day are also exempt.

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.

Watershed Planning.

The Watershed Planning Act establishes a process through which local groups can develop and implement plans for managing and protecting local water resources and rights. The local groups authorized to develop watershed plans are organized by water resource inventory areas (WRIAs). A WRIA is, generally speaking, an area determined to be a distinct watershed. There are 64 WRIAs identified by Ecology. Each WRIA is identified by a number and may contain a local watershed planning group with an identified lead entity.

Summary of Bill:

Building Permits and Subdivision Approvals.

An applicant for a building permit requiring potable water may present a water well report for a permit-exempt groundwater withdrawal that is not prohibited by an instream flow rule, as evidence of an adequate water supply for the building. As part of such evidence, neither the building permit applicant nor the local permitting authority is required to conduct an impairment review. As a condition of granting such a building permit, a county or city may require the applicant to connect to an existing public water system, where the existing water system has the capacity to provide safe and reliable potable water with reasonable economy and efficiency.

In approving a subdivision, dedication, or short subdivision, a county or city may rely on or refer to applicable water resource management rules adopted by the Department of Ecology (Ecology) to determine if appropriate provisions have been made for potable water. Such a determination does not require the applicant, city, town, or county to conduct an impairment review.

Growth Management Act–Comprehensive Plans.

In complying with the Growth Management Act's (GMA) mandate to provide for protection of the quality and quantity of groundwater used for public water supplies, a county or city is authorized to rely on or refer to applicable water resource management rules adopted by Ecology.

The rural element of a comprehensive plan must include measures to protect critical areas, and surface water and groundwater resources, which may include measures that rely on or refer to applicable water resource management rules adopted by Ecology.

Water Rights Permits.

Whenever Ecology approves a water rights permit for a body of water for which Ecology has adopted an instream flow rule, the permit must be conditioned to mitigate impacts to fish and fish habitat. Mitigation need not be limited to measures that require the replacement of water, and may include other mitigation measures that mitigate the impact of the use of the water without requiring the replacement of water. Ecology may not require the water user to mitigate for impacts that do not result from the water user's use of water.

Appropriation: None.

Fiscal Note: Available.

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