

SENATE BILL REPORT

SHB 1332

As of March 16, 2009

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

Committee Activity: Environment, Water & Energy: 3/13/09.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: Karen Epps (786-7424)

Background: 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 state political subdivisions.

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.

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.

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 Bill: A watershed management partnership and the separate legal entity created by the partnership pursuant to an agreement for joint or cooperative action 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 have been formed or qualified before July 1, 2006; not be engaging in planning or implementation of a plan for a water resource inventory area; and 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 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 30 days before the partnership board authorizes condemnation.

Appropriation: None.

Fiscal Note: Not requested.

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: This bill will provide water security for roughly 1 million people and businesses that have been depending on Seattle for its water. This is an example of how other jurisdictions can band together across the state to provide water to a region. Any water purveyor has to have two authorities, bonding authority and eminent domain authority. There is no water purveyor out there that does not have eminent domain authority. A large water purveyor needs eminent domain authority in order to provide water to its customers. There is no increase in scope of eminent domain authority. The bill merely allows this entity made up of various jurisdictions, each of whom have eminent domain, to use it together when exercising eminent domain.

The board of this watershed management partnership is comprised of elected officials. There is concern that if a single entity exercised eminent domain authority on behalf of this separate entity that there would be a legal challenge against that single entity because the water that is transported to the area of that entity may also be used by other entities in the partnership. This is similar to private corporations or other governmental entities that have eminent domain authority to convey water. Sometimes the water is not where the water ends up and a water purveyor needs eminent domain authority to move that water outside the district to do it. This bill requires notice to the various governments if the right of eminent domain were to

be exercised in the jurisdiction of that city, town, or county. As an example, the city of Tacoma has used its broad eminent domain authority in order to provide water to Bonney Lake.

Since 1917, any person has the right to condemn under eminent domain to transmit water for which they have right to apply it to beneficial use and this is often done outside their boundaries. Cascade Water Alliance was issued a water permit, but that permit was appealed to the Pollution Control Hearings Board and had been referred back to the Department of Ecology, who has not reissued a water permit.

CON: Cascade Water Alliance wants to build a large pipeline to move water out of Lake Tapps. Cascade Water Alliance has been in the process of obtaining this water right, but it is not approved yet. Additionally, they have not prepared an environmental impact statement. This legislation is premature as this is not a shovel ready project. Cascade has a variety of issues that need to be resolved before they need this legislation. This is similar to what happened in the Owens Valley in California when Los Angeles came in and moved all the water out of the area. It makes sense to give the local process time work.

Eminent domain reform has occurred in 42 states, but not yet in Washington. Each of the members of Cascade Water Alliance has the authority to exercise eminent domain in order to get water to their constituents but this bill would remove the accountability to the voters that exists when an individual entity exercises eminent domain. There is no one on the Cascade Water Alliance Board that represents Bonney Lake, Auburn, Sumner, and Buckley, all of whom will be impacted by water withdrawals from Lake Tapps. Bonney Lake has its own water rights. The water rights of Bonney Lake are affected when lake levels drop. Bonney Lake does not have sufficient water rights to provide water service as the city grows.

Persons Testifying: PRO: Representative Goodman, prime sponsor; Tim Schellburg, Cascade Water Association; Robert Mack, City of Tacoma.

CON: Neil Johnson, Mayor, Bonney Lake; Shawn Bunney, Pierce County Council; Dan Wood, Washington Farm Bureau; Ralph Mason, Leon Stucki, Jim Diebag, Lake Tapps Home Owners Association.