

# SENATE BILL REPORT

## SB 5836

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As Reported by Senate Committee On:  
Agriculture, Water & Rural Economic Development, February 21, 2013

**Title:** An act relating to providing certainty for local governments on water resource decisions.

**Brief Description:** Providing certainty for local governments on water resource decisions.

**Sponsors:** Senators Honeyford, Bailey and Hatfield.

**Brief History:**

**Committee Activity:** Agriculture, Water & Rural Economic Development: 2/21/13 [DPS].

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

**Majority Report:** That Substitute Senate Bill No. 5836 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hatfield, Chair; Honeyford, Ranking Member; Brown, Hobbs, Schoesler and Shin.

**Staff:** Bob Lee (786-7404)

**Background:** All groundwater withdrawals require an application and permit from the Department of Ecology (Department). Exemptions from this permit 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. Court rulings have held that a subdivision is only eligible to withdraw a total of 5000 gallons per day for the entire group under the applicable exemption.

The Department has exercised authority in certain basins or subbasins of the state to limit the uses of new exempt wells through adoption of rules under the 1971 Water Resources Act. Of the 62 basins in the state, approximately half have basin rules in effect.

The approval or denial of building subdivisions is generally a local government decision. In making that decision, a local government must consider if the public interest is served by the proposed subdivision and whether or not appropriate provisions will be made for public

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health, safety, the general welfare, and other considerations. One of these considerations is whether the proposed subdivision will have access to sufficient potable water.

As part of the 1990 Growth Management Act, before a building permit is issued, the local government must require the applicant to provide evidence of an adequate water supply for the intended use of the building. The evidence may be a water right permit from the Department, a letter from an approved water purveyor stating their ability to provide water, or another form sufficient to verify the existence of an adequate water supply.

Court rulings have interpreted these statutes to require the local government to determine whether a water supply is legally available.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Recommended Substitute):** In determining whether water supplies are legally available to obtain a building permit, local governments may require the applicant to demonstrate that the use of water from a permit-exempt well is consistent with applicable rules adopted by the Department under the 1971 Water Resources Act for the specific basin or subbasin.

For approval of subdivisions by local governments, permit-exempt wells may be used to satisfy the requirements to provide potable water to the subdivision as long as the use is consistent with applicable rules adopted by the Department under the 1971 Water Resources Act for the specific basin or subbasin.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** None.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Case law has muddied the waters. Now counties have to deal with whether water is legally available when people apply for a building permit or the approval of a subdivision if it depends on an exempt well. Counties have no real way to determine whether water is legally available. This bill makes it very clear that counties must follow rules adopted by the Department that determine when water is legally available. Home construction is not currently very active and this bill is needed to allow people to start building homes again. This provides a clear path to compliance.

CON: The Yakamas have concerns because the bill does not address some of the sub-basins in the Yakima Basin. The court ruled that local governments must determine whether water is legally available before issuing building permits.

OTHER: The Department will have to review the language with the program and their attorneys to see if it fully addresses the court decisions. There is interest in adding that when the Department adopts rules, they must make provisions for water supplies for home

construction. Some basin rules have done this, but others have left people without viable solutions. More time is needed to study the recently released bill.

**Persons Testifying:** PRO: Laura Merrill, WA Assn. of Counties; Paul Jewell, Kittitas County Commissioner; David Sauter, Klickitat County Commissioner; Paul Pearce, National Forest Counties; Steve Gano, Building Industry Assn. of WA; John Stuhlmiller, WA Farm Bureau.

CON: Dawn Vyvyan, Yakama Nation; Bruce Wishart, Center for Environmental Law and Policy.

OTHER: Bill Clark, WA Realtors; Evan Sheffels, Dept. of Ecology; Dawn Vyvyan, Puyallup Tribe of Indians.