

HOUSE BILL REPORT

HB 1459

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to considering the full hydrologic cycle in the review and approval process of new water uses.

Brief Description: Considering the full hydrologic cycle in the review and approval process of new water uses.

Sponsors: Representatives Buys, Taylor, Van Werven, Short, Dent, Hayes and Haler.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/8/17, 2/16/17 [DPS].

Brief Summary of Substitute Bill

- Requires the Department of Ecology to consider land uses that could potentially recharge water into an aquifer when considering and approving water right permits and permit-exempt withdrawals of groundwater.
- Requires elements of county comprehensive plans adopted under the Growth Management Act that provide for the protection of groundwater and critical areas to take into account the full hydrologic cycle, including land uses that may result in aquifer recharge.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Blake, Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Kretz, Pettigrew, Schmick, Springer and J. Walsh.

Minority Report: Do not pass. Signed by 4 members: Representatives Fitzgibbon, Lytton, Robinson and Stanford.

Minority Report: Without recommendation. Signed by 1 member: Representative Chapman, Vice Chair.

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.

Staff: Rebecca Lewis (786-7339).

Background:

Permit-Exempt Wells.

Most groundwater withdrawals require an application and permit from The Department of Ecology (Ecology). However, there is a class of lawful, unpermitted wells, often referred to as "permit-exempt wells," which may be constructed and used without first obtaining a permit from Ecology.

Exemptions from the permitting requirement 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 5,000 gallons per day are also included in the class of permit-exempt wells.

Ecology has exercised authority in certain regions of the state to limit the availability of new permit exempt wells. This includes agency rules applicable to portions of Skagit, Kittitas, Clallam, and Jefferson counties.

Instream Flow Rules.

Perennial rivers and streams of the state must maintain base flows necessary to provide protection for the fish, wildlife, and recreational and aesthetic values of the waterways. Withdrawals that conflict with the base flows may only be authorized if the withdrawal serves an overriding consideration of public interest (OCPI). Additionally, 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. These levels, commonly called "instream flows," essentially function as water rights with a priority date set at the adoption date of the corresponding rule. There is an instream flow rule in place for almost half of the state's watersheds.

Per statute, the instream flow may not affect an existing water right with a senior time priority date. Ecology may not allow any subsequent water withdrawals with a junior time priority date to the instream flow that conflicts with the established flow level unless the withdrawals clearly serve to satisfy an OCPI. Recent state Supreme Court decisions found that Ecology improperly applied the OCPI standard in certain instances.

Growth Management Act.

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, and a significantly wider array of planning duties for the 29 counties and the cities within that are obligated by mandate or choice to satisfy all planning requirements of the GMA. Of the 29 counties and the cities within that fully plan under the GMA, 18 were required by population criteria to become planning jurisdictions. The remaining 11 counties elected through a resolution of their county legislative authority to have all planning requirements of the GMA apply to them and to the cities within.

As established in the GMA, all counties and cities must also designate and protect environmentally sensitive critical areas. These requirements obligate local governments, using the best available science, to adopt development regulations to protect critical areas (also known as critical areas ordinances) that comply with specified criteria. Critical areas include: wetlands; aquifer recharge areas; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas. The Department of Commerce provides technical and financial assistance to jurisdictions that must implement requirements of the GMA.

Each comprehensive plan adopted by a county or city must include seven mandatory elements consisting of a plan, scheme, or design. Two of the seven mandatory elements contain provisions addressing the protection of water resources: the land use element and the rural element. Specifically, the land use element must provide for the protection of the quality and quantity of groundwater use for public water supplies, and the rural element must include measures that protect the rural character of an area by protecting surface and groundwater resources. A recent Washington Supreme Court decision held that a county must make an independent determination regarding the legal availability of water instead of relying on Ecology rules.

Counties that fully plan under the GMA must designate urban growth areas, areas within which urban growth must be encouraged and outside of which growth can occur only if it is not urban in nature. These fully planning counties and each city within must include in their urban growth areas, areas and densities that are sufficient to permit the urban growth projected to occur in the county or city for the succeeding 20-year period.

Summary of Substitute Bill:

When considering and approving water right permits and permit-exempt withdrawals of groundwater, the Department of Ecology must consider the full hydrologic cycle, including land uses that could potentially recharge water into an aquifer.

The portions of county comprehensive plans providing for the protection of critical areas, surface waters, and groundwater must also consider the full hydrologic cycle, including land uses that may result in aquifer recharge.

Substitute Bill Compared to Original Bill:

A technical change is made to correct a drafting error.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) There is data that suggests that a full grown fir can remove up to 3,000 gallons of water per day out of an aquifer. Removal of trees or other changes to the natural aspects of a piece of property have the potential to recharge a substantial amount of water into an aquifer in some cases. It is important to look at the full hydrologic cycle when considering impacts to aquifers that may result from changes in land use. The bill is science-based and mirrors what can be obtained on the ground when properly developing rural properties. Potential recharge due to land-use changes are currently not considered.

(Opposed) There are too many withdrawals of groundwater through wells already. Projects involving the removal of trees often also include putting in impervious surfaces that cause runoff and stormwater problems, making it more difficult for water to return to the ground. Rather than encourage recharge, cutting down trees has the opposite effect. The idea to remove trees to recharge aquifers is not a new idea. It is a flawed theoretical approach that ignores the benefits that trees offer in terms of water quality and fish habitat. While looking at the whole hydrologic cycle is a good idea, there are places where timber cutting has not worked very well and has caused damage to water quality and wildlife.

(Other) This concept is not in the Governor's budget, but the innovative approach in the bill is appreciated and expresses a fair point. In practice, evaluating the full hydrologic cycle would be a work intensive process and require more time and staffing than current practice. There are concerns about long-term impacts.

Persons Testifying: (In support) Representative Buys, prime sponsor; and Glen Smith, Washington State Groundwater Association.

(Opposed) Bruce Wishart, Sierra Club and Center for Environmental Law and Policy; Dawn Vyvyan, Yakama Nation and Puyallup Tribe of Indians; and Denise Smith, League of Women Voters.

(Other) Tom Loranger, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.