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**Agriculture & Natural Resources  
Committee**

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**HB 1885**

**Brief Description:** Clarifying the roles of state and local governments in the regulation and mitigation of water resources.

**Sponsors:** Representatives Springer, Dent, Blake, Manweller, Koster, Haler and Muri.

**Brief Summary of Bill**

- Permits a county or city to refer to applicable Department of Ecology (Ecology) instream flow rules when complying with the Growth Management Act's requirements regarding the protection of surface water and groundwater resources.
- Permits a county, city, or town to rely on Ecology's instream flow rules to determine the existence of an adequate potable water supply when approving an application for a subdivision or similar development.
- Permits an applicant for a residential building permit to provide evidence of an adequate water supply by presenting a water well report for certain permit-exempt groundwater withdrawals.
- Establishes a fee of up to \$250 to be charged in connection with an application for a building permit that will rely on a permit-exempt groundwater withdrawal for its water supply; the fee must be remitted to Ecology for the purpose of supporting the collection of accurate information regarding permit-exempt groundwater withdrawals.
- Authorizes Ecology to condition a water rights permit on mitigating impacts to fish and other aquatic resources.
- Directs Ecology to establish a program to mitigate cumulative impacts of permit-exempt domestic wells in basins where Ecology has adopted a minimum instream flow rule.

**Hearing Date:** 2/7/17

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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.*

**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 Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities.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.

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.

GMA—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.

GMA—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.

Water Rights.

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:**

##### Growth Management Act.

When planning for and regulating development, a county or city may rely on or refer to applicable Department of Ecology (Ecology) water resource management rules when complying with the GMA's requirements regarding the protection of surface water and groundwater resources.

##### Residential Building Permits.

An applicant for a residential building permit may provide evidence of an adequate water supply by presenting a water well report for a permit-exempt groundwater withdrawal that is not

prohibited by an instream flow rule. In basins where instream flow rules have been adopted, a county or city may impose a fee of up to \$250 for a building permit that will rely on a permit-exempt withdrawal for its water supply. The purpose of the fee is to support the collection and management of accurate information regarding exempt withdrawals. Funds collected from the fee must be remitted to Ecology.

#### Subdivision Approvals.

When approving an application for a subdivision or similar development, a city, town, or county may rely on Ecology's instream flow rules to determine the existence of an adequate potable water supply.

#### Beneficial Use Applications and Minimum Instream Flows.

When Ecology receives an application for a permit to make beneficial use of public waters for a water body subject to minimum instream flows, the basis on which Ecology shall condition the permit is expanded to allow for conditioning the permit on mitigating the impacts to fish and other aquatic resources.

#### Mitigation of Cumulative Impacts in Basins with Minimum Instream Flows.

Ecology must establish a program to mitigate cumulative impacts of permit-exempt domestic wells in basins where Ecology has adopted a minimum instream flow rule. The mitigation program must address the cumulative impacts of domestic permit-exempt withdrawals on a watershed or sub-basin basis. The mitigation program must not require individual mitigation in connection with each permit-exempt domestic withdrawal, except where groundwater mitigation is required by the county through an adopted mitigation program. The mitigation program must either protect minimum instream flows, or must mitigate impacts to fish or aquatic resources.

Ecology may establish a program to mitigate cumulative impacts of permit-exempt domestic wells in basins where permit-exempt domestic withdrawals are causing significant adverse cumulative impacts to fish species of concern, or where land use and growth projections establish a strong likelihood of significant adverse cumulative impacts.

On the request of a county, Ecology must permit a county with jurisdiction over a watershed resource inventory area to administer the cumulative impacts mitigation program for the relevant area. The mitigation program may also be administered by another entity through agreement, so long as both the county and Ecology are parties to any such agreement.

#### Definition of "Withdrawal of Water."

The "withdrawal of water" under the Water Resources Act of 1971 is defined to mean the removal of water from any source for a beneficial use.

**Appropriation:** None.

**Fiscal Note:** Available.

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