

HOUSE BILL REPORT

HB 2239

As of Second Reading

Title: An act relating to addressing water availability issues created by the Washington supreme court decision in Whatcom County v. Western Washington Growth Management Hearings Board, also known as the Hirst decision, solely by providing immediate and temporary relief to landowners affected by the Hirst decision by ensuring that a water well report for a groundwater withdrawal exempt from permitting and not prohibited by an applicable water resources management rule adopted by the department of ecology may serve until December 31, 2018, as evidence of an adequate water supply for a building necessitating potable water, allowing cities and counties to rely until December 31, 2018, on water resource management rules adopted by the department of ecology in providing for the protection of surface water and groundwater resources except in certain water resource inventory areas, and creating a task force.

Brief Description: Addressing water availability issues created by the Washington supreme court decision in Whatcom County v. Western Washington Growth Management Hearings Board, also known as the Hirst decision, solely by providing immediate and temporary relief to landowners affected by the Hirst decision by ensuring that a water well report for a groundwater withdrawal exempt from permitting and not prohibited by an applicable water resources management rule adopted by the department of ecology may serve until December 31, 2018, as evidence of an adequate water supply for a building necessitating potable water, allowing cities and counties to rely until December 31, 2018, on water resource management rules adopted by the department of ecology in providing for the protection of surface water and groundwater.

Sponsors: Representatives Stanford, Springer, Blake and Tharinger.

Brief History:

Committee Activity:

None.

Brief Summary of 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, until December 31, 2018, and except in certain areas.

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.

- 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, until December 31, 2018, and except in certain areas.
- 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, until December 31, 2018, and except in certain areas.
- Creates a joint legislative task force to review the treatment of permit-exempt groundwater withdrawals and certain other water-related topics.

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 Evidence of Adequate Water Supply.

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.

Building Permits and Vested Rights.

The Legislature has codified the vested rights doctrine, in various forms, as it pertains to land use, property development, and construction permitting. For example, the State Building Code Act requires that a valid and fully complete building permit application for a structure, which is permitted under applicable zoning or other land use control ordinances, be considered under the ordinances in effect at the time of the application.

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 mainstream 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.

Until December 31, 2018, and except in certain Water Resource Inventory Areas (WRIAs) listed below, 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.

A water well report for a permit-exempt groundwater withdrawal that is not prohibited by an instream flow rule may not serve as evidence of an adequate water supply for a building requiring potable water in the following areas: WRIAs that are subject to a federally administered water rights adjudication; WRIAs with instream flow rules that were adopted after 2001; the Yakima River basin, WRIAs 37 through 39; the Skagit River basin, WRIAs 3 and 4; and the Methow River basin, WRIA 48.

In order for a building permit applicant to be eligible to rely on 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, the applicant must submit a valid and fully complete permit application to the appropriate permitting authority by December 31, 2018.

Growth Management Act – Comprehensive Plans.

Until December 31, 2018, and except in certain Water Resource Inventory Areas (WRIAs) listed below, a county or city is authorized 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.

The authority for a city or county to rely on applicable water resource management rules adopted by Ecology in complying with the GMA's mandate to provide for protection of the quality and quantity of groundwater used for public water supplies does not apply in the following areas: WRIAs that are subject to a federally administered water rights adjudication; WRIAs with instream flow rules that were adopted after 2001; the Yakima River basin, WRIAs 37 through 39; the Skagit River basin, WRIAs 3 and 4; and the Methow River basin, WRIA 48.

Permit-exempt Well Joint Legislative Task Force.

A joint legislative task force is created to review the treatment of permit-exempt groundwater withdrawals, and to review the implementation of other components of the act.

The task force must consist of the following members: two members from each of the two largest caucuses of the Senate; two members from each of the two largest caucuses of the House of Representatives; one representative each from the Departments of Ecology, Agriculture, and Fish and Wildlife; one representative from an environmental advocacy organization; one representative from an organization representing Washington cities; one representative from an organization representing Washington counties; one representative from an organization representing the development community; and three representatives from Indian tribes, two of whom must be invited to participate at the recommendation of the Northwest Indian Fisheries Commission, and one of whom must be invited to participate at the recommendation of the Columbia River Intertribal Fish Commission.

The task force must hold its first meeting by September 30, 2017, and the task force must make its recommendations to the Legislature by December 1, 2018.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for section 3, relating to comprehensive plans under the Growth Management Act, which takes effect July 28, 2017.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.