
Local Government Committee

HB 2288

Brief Description: Limiting the authority of growth management hearings boards to hear petitions challenging the regulation of permit exempt wells.

Sponsors: Representatives Buys, Haler, Overstreet and Taylor.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Prohibits the Growth Management Hearings Board from hearing petitions challenging the regulation of the public groundwater withdrawals that are exempt from permit requirements governing public groundwater withdrawals.

Hearing Date: 1/29/14

Staff: Ethan Moreno (786-7386).

Background:

Growth Management Act/Growth Management Hearings Board.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. 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 to satisfy all planning requirements of the GMA.

The GMA directs planning jurisdictions (*i.e.*, 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, which are the frameworks of county and city planning actions, are implemented through locally-adopted development regulations. Comprehensive plans must include specific planning elements, each of which is a subset of a comprehensive plan.

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.

The GMA establishes 14 planning goals in a non-prioritized list that must be used exclusively for guiding the development and adoption of comprehensive plans and development regulations.

Examples of the planning goals include the following:

- urban growth - encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner;
- reduce sprawl - reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
- property rights - private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions; and
- environment - protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

The Department of Commerce (Commerce) provides technical and financial assistance to jurisdictions that must implement requirements of the GMA.

The GMA also establishes a seven-member quasi-judicial Growth Management Hearings Board (Board) to make determinations related to the implementation of the GMA. The Board has limited jurisdiction and may only hear and determine petitions alleging:

- that a state agency or planning jurisdiction is noncompliant with the GMA, specific provisions of the Shoreline Management Act, or certain mandates of the State Environmental Policy Act relating to qualifying plans, regulations, or amendments;
- that the 20-year planning population projections adopted by the Office of Financial Management should be adjusted;
- that an approval or rejection of a county work plan by Commerce for the Voluntary Stewardship Program (VSP) is noncompliant with specific VSP requirements;
- that county regulations adopted to comply with VSP requirements are not rationally applicable and cannot be adopted by another jurisdiction in the implementation of the VSP; or
- that Commerce's certification of county development regulations adopted to protect certain critical areas in conformity with VSP requirements is erroneous.

Each petition for review that is filed with the Board must be heard and decided by a regional three-member panel of Board members. The Board must make findings of fact and prepare a written decision in each decided case. Findings of fact and decisions become effective upon being signed by two or more members of the regional panel deciding the case and upon being filed at the Board's principal office. Final decisions of the Board may be appealed to the superior court. Additionally, if all parties agree, the superior court may directly review a petition filed with the Board.

Groundwater Exempt Wells.

All public groundwater withdrawals require an application and approved permit from the Department of Ecology (DOE). Exemptions to this permit requirement (*i.e.*, "exempt wells") include any withdrawal of public groundwater for stock-watering purposes, or for watering a lawn or a noncommercial garden less than 0.5 acre. Single or group domestic uses or industrial purposes in an amount not exceeding five thousand gallons a day are also exempt from the application and permit requirements, however, court rulings have held that group uses are only

eligible to withdraw a total of 5,000 gallons per day for the entire group under the applicable exemption.

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

Recent Supreme Court Action.

In 2011 the Washington State Supreme Court (Court) considered the issue of whether the Board has jurisdiction to hear petitions related to the regulation of public groundwater. In *Kittitas County v. The Eastern Washington Growth Management Hearings Board*, 172 Wn.2d 144 (2011), the Court affirmed a Board decision finding that Kittitas County's subdivision regulations failed to protect water resources as required by the environment planning goal of the GMA and requirements governing comprehensive plans. In reaching its decision, the Court held that because of the GMA's requirements to protect water, the Board has statutory authority to hear petitions that challenge whether development regulations violate the provisions of the GMA requiring a county to address water issues in its land use planning.

Summary of Bill:

The Growth Management Hearings Board may not hear petitions challenging the regulation of the public groundwater withdrawals that are exempt from application and permit requirements governing public groundwater withdrawals.

Appropriation: None.

Fiscal Note: Requested on January 29, 2014.

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