

HOUSE BILL REPORT

ESHB 2514

As Amended by the Senate

Title: An act relating to watershed management.

Brief Description: Providing for integrated watershed management.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Chandler, Linville, Mastin, Parlette, Koster, Anderson, Regala and Cooper).

Brief History:

Committee Activity:

Agriculture & Ecology: 1/12/98, 1/23/98, 2/5/98 [DP];
Appropriations: 2/7/98 [DPS].

Floor Activity:

Passed House: 2/17/98, 86-10.
Senate Amended.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass. Signed by 6 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Linville, Ranking Minority Member; Koster; Mastin and Sump.

Minority Report: Do not pass. Signed by 4 members: Representatives Schoesler, Vice Chairman; Anderson, Assistant Ranking Minority Member; Cooper and Regala.

Staff: Bill Lynch (786-7092) and Kenneth Hirst (786-7105).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 23 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; H. Sommers, Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Benson; Carlson; Cooke; Crouse; Grant; Kessler; Lambert; Linville; Lisk; Mastin; McMorris; Parlette; D. Schmidt; Sehlin; Sheahan and Talcott.

Minority Report: Do not pass. Signed by 7 members: Representatives Chopp; Cody; Keiser; Kenney; Poulsen; Regala and Tokuda.

Staff: Jeff Olsen (786-7157).

Background: Water Resource Management. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water may be established under a permit system. Certain uses of groundwater not exceeding 5,000 gallons per day are exempted from this permit requirement, however. Other laws authorize the state to establish minimum flows and levels for streams and lakes. The permit system and the state's laws for managing water resources are administered by the Department of Ecology (DOE). The DOE also limits the discharge of pollution to the surface and ground waters of the state.

Water Resource Planning. The groundwater code permits the DOE to designate and manage groundwater areas, sub-areas, or depth zones to prevent the overdraft of groundwaters. As amended in 1985, the code allows groundwater management studies to be initiated locally and allows local governments to assume the lead agency role in developing local groundwater management programs. The Water Resources Act directs the DOE to develop a comprehensive state water resources program for making decisions on future water resource allocation and use. The act permits the DOE to develop the program in segments. Under the act, the DOE has divided the state into 62 water resource inventory areas (WRIAs).

Summary of Bill: Integrated Watershed Management. Local governments may choose to provide for the development of integrated watershed management for water quantity aspects of water resource management, water quality, and the coordination of protection or enhancement of fish habitat. If watershed management is initiated, minimum instream flows must be established for the principal streams in the watershed. The area covered by such watershed management is called the management area and, with certain exceptions, is made up of one or more WRIAs.

Beginning the Process. The county with the largest area in a proposed management area, the city in that area using the largest amount of water from the area, the city cumulatively diverting the largest amount of water from within the area, and the water supply utility that provides the largest quantity of water in the area may jointly and unanimously choose to initiate the development of integrated watershed management in that area. If they choose to initiate watershed management, they must invite the Indian tribe with the largest reservation in the proposed management area to participate. The county must convene a public meeting to discuss the appointment of a planning unit and obtain comments regarding the development of watershed management. Notices of the meeting must be sent and published. At or following the meeting, the initiating governments are to vote as to whether to proceed with the development of watershed management.

Lead agency. If the initiating governments choose to proceed, they choose a lead agency, and may choose the type of planning unit to be used in the proposed management area. The county with the largest area in the boundaries of the management area is the lead agency, unless the initiating governments approve the designation of another governmental agency with its written consent. The lead agency is the entity that provides administrative staff support for the planning unit and receives grants for the unit.

Planning Unit. If integrated watershed management is to be conducted in the management area, it is to be conducted by one planning unit. The cities, counties, and tribe may choose an existing planning group for local representation on the planning unit or they may identify the composition of a new group for that representation. If they do not choose such an existing or new group, the membership to be used for the planning unit is specified.

Existing or New Group. For an existing group to be chosen, it must have been in existence for at least one year. The representation of governmental entities and interests on such an existing group must be generally similar to the representation in the specified unit, or the planning group membership must be that specified by other law. The existing group chosen in this manner plus the membership specified for the state and tribal governments make up the planning unit. If the cities, counties, and tribe create a new group, they must include the interests represented by the governmental entities and interests appointed to the specified planning unit and must take care to ensure that diverse interests are represented. The new group created in this manner plus the membership specified for the state and tribal governments make up the planning unit. Such an existing or new group must have positions that directly represent cities and positions that directly represent counties.

Alternative Specified Membership. A planning unit membership is specified and this membership is to be used unless a planning unit incorporating an existing or new group is created. That membership is: one member representing each county in the management area, appointed by the county; one member representing cities for each county in the area appointed by the cities within that county; one member representing water supply utilities for each county in the area, appointed jointly by the three largest water supply utilities in the county; one member representing all conservation districts in a single WRIA management area or up to two members representing all conservation districts in the multiple WRIA area, appointed jointly by the districts; three members representing various major interests in the area, appointed jointly by the cities in the area; three members representing various major interests in the area appointed jointly by the counties with territory within the area; three members representing major interests in the area appointed jointly by the cities and counties with territory in the area; one member representing the general citizenry appointed jointly by the cities in the area; one member representing the general citizenry appointed jointly by the counties in the area; two members representing the general citizenry appointed jointly by the cities and counties, of which at least one shall be a holder of a water right certificate and at least

one shall be a holder of a registered water right claim; and up to four members representing state agencies. The state agency members are representatives of the Department of Natural Resources, the Department of Fish and Wildlife, the Department of Ecology, and the Department of Transportation. The state agency representatives share two votes in all voting circumstances.

If one or more federal Indian reservations are located in whole or in part in the management area, or if one or more tribes located in this state have federally recognized ceded land in that area or fishing rights recognized under federal case law on lands in that area, the planning unit must promptly invite the tribal governments of each of these reservations and tribes to appoint one member. The Governor must appoint one of the state representatives as the lead state representative whose duty it is: to ensure that the state speaks with one voice; to coordinate state participation; and to secure and coordinate the state's technical assistance.

A planning unit may invite representatives of federal agencies to participate as non-voting representatives.

Major Interests. In appointing persons to a planning unit representing major interests in the area, the cities and counties must ensure that economic and environmental interests and instream and out-of-stream interests in the area are represented. In doing so, they may consider industrial water users, general businesses, hydroelectric and thermal power producers, irrigated agriculture, non-irrigated agriculture, forestry, recreation, environmental, and recreational and commercial fisheries interest groups, and others.

Vacancies and Absences. A vacancy on a planning unit is filled in the same manner set for original appointments. No person who is a member of a planning unit may designate another to act on his or her behalf. Five absences result in the person's position on the planning unit being considered vacant.

Work of the Planning Unit. A planning unit must, as a matter of high priority: (a) review the historical geographical characteristics of the management area, and review existing planning and activities regarding watershed management in the management area; and (b) identify projects and activities in the area that it believes will likely serve short-term or long-term management goals and warrant immediate financial assistance. The planning unit must prioritize the latter and submit its prioritized list to state and local government.

Components to be Developed. Integrated watershed management established for *water quantity* management must include: an assessment of water supply and use in the management area, including an estimate of the amount of water represented by registered water right claims, permits, certificated rights, existing minimum instream flow rules, and any other quantified rights to water; an estimate of the water needed in the future for use; water recharge areas; an estimate of the surface and ground water available for

further appropriation; and strategies for increasing water supplies in the area to supply water for the minimum instream flows and for other future needs. Watershed management established for *water quality* must include: an examination of the degree to which water quality standards are being met in the area; an analysis of the causes of water quality violations; an identification of the beneficial uses of nonmarine bodies of water for water quality classification purposes; an identification of the class of use for nonmarine bodies of waters and for basin-specific water quality standards that may be adopted and recommendations for those standards; a strategy for achieving compliance with water quality standards; and recommended means of monitoring the effects of the actions taken to implement the strategy. Watershed management coordinated or developed to protect or enhance fish *habitat* must include: an analysis of the potential for protecting or enhancing such habitat in the area; an identification of activities, projects, and voluntary transactions that would provide the greatest benefit to such habitat; recommended means of ensuring that they will be undertaken; and recommended means of monitoring the effect of undertaking them.

A planning unit cannot add a component to its integrated watershed management that creates an obligation for a unit of government unless the members of the planning unit appointed to represent that unit of government agree to adding the component, as evidenced by a recorded vote on it. The planning unit must identify within the management: necessary implementation actions, monitoring, and any needed modifications; and the entities responsible for these and their coordination. It may choose to develop, as part of its watershed management, drafts of state administrative rules and local ordinances that would be needed.

Instream Flows. Minimum instream flows must be established by rule for the principal streams in the management area. At the time a planning unit is chosen or initial appointments are made, the cities and counties may decide that the planning unit will not participate in identifying such flows in the area. If so, they must request the DOE to adopt rules establishing those flows in the management area. In all other management areas, it is DOE's duty to attempt to achieve consensus among all of the members of the planning unit regarding the flows. If such consensus is achieved, the DOE must promptly adopt these flows by rule. Approval is determined by a recorded vote of the members of the planning unit present for the vote. It is achieved if: each of the members who has been appointed to represent the state, to represent tribal government, to represent directly counties, or to represent directly cities records his or her support for the proposed flows as part of the recorded vote or abstains from voting on the proposal; and a majority of the other members of the planning unit present records support for the flows as part of the recorded vote. Notice that such a recorded vote will be taken on proposed minimum instream flows must be sent to each member appointed to the planning unit and must be announced at a previous meeting. If approval is not achieved within four years, the DOE may promptly initiate rule-making to establish minimum instream flows for these streams. The DOE has two years to set the instream flows when approval is not achieved. Minimum instream flows established by this process

have a priority date of two years after the planning unit first received funding from the DOE.

If the cities and counties requested the DOE to set minimum instream flows, the "principal" streams are the streams determined by the DOE to be the principal streams. In any other management area, the principal streams are the main stem of the stream with the largest annual average flow in each WRIA in the area and any tributary or other streams in the area determined to be principal streams by the planning unit. However, minimum instream flows cannot be proposed or adopted for the main stem of the Columbia River or the main stem of the Snake River under this process.

Approval by Planning Unit. Upon completing its proposed integrated watershed management for the area, the planning unit must publish notice of and conduct at least one public hearing in each county in the management area on the proposal. It must attempt to achieve consensus among the members of the planning unit in developing the components of the watershed management. The DOE and the tribal government with reservation land in the WRIA must notify the planning unit of any provisions which conflict with federal or state law. If the recommendations of the DOE or tribe aren't adopted it is submitted to mediation. If mediation doesn't resolve the dispute, the DOE must file a declaratory judgment action in superior court. Approval of the watershed management is achieved if it is supported by each representative of the state, cities, counties, water supply utilities, conservation districts, and tribal governments with reservation land in the WRIs; as well as a majority of the people representing major interests and the general citizenry in the WRIA.

Approval by Counties. The legislative authority of each of the counties with territory in the management area must provide public notice of and conduct at least one public hearing on the watershed management approved by the planning unit. The counties may approve or reject the watershed management, but may not amend it. To be approved, it must be approved by the legislative authorities of the counties. If a proposed integrated watershed management is not approved, it is returned to the planning unit with recommendations for revisions. If the revisions are not approved by the planning unit, they are submitted to mediation. If mediation does not achieve agreement, the planning unit may either submit the components for which agreement was achieved to the county for approval or terminate the process. Each city in the WRIA has an opportunity to express agreements or concerns.

If integrated watershed management is approved by the planning unit and the counties and that management creates obligations for state agencies, the obligations are binding and the agencies must adopt implementing rules and take other actions to fulfill their obligations as soon as possible.

Financial Assistance. The DOE must develop and administer a grant program to provide direct financial assistance to planning units. Three separate grants may be awarded:

initial organizing grants of up to \$50,000; grants of up to \$250,000/WRIA for watershed assessments; and grants of up to \$250,000/WRIA for the development of integrated watershed management, establishing instream flows, and implementation. The total amount of the grants may not exceed \$500,000/WRIA. Authorized uses of and eligibility criteria for receiving the grants are specified. Any moneys made available for implementation in a management area under such a grant are available only from the grant balance for implementation that commences after a unit's integrated watershed management has been adopted for the area by the counties.

Except for the original organizing grant, preference is to be given to applications in the following order of priority: (1) applications from existing planning groups that have been in existence for at least one year; (2) applications from multi-WRIAs that propose to address protection and enhancement of fish habitat in watersheds that have aquatic species listed as endangered or threatened under the ESA, and for which there is evidence of an inability to supply adequate water for population and economic growth; (3) applications from single WRIAs that propose to address fish habitat in watersheds with ESA listings, and for which there is evidence of an inability to supply inadequate water for population and economic growth; (4) applications from multi-WRIAs that propose to address fish habitat in watersheds with ESA listings; and (5) applications from single WRIAs that propose to address fish habitat in watershed with ESA listings.

Technical Assistance. The lead state representative on a planning unit must establish a program to provide technical assistance to the planning unit. The program must use existing requirements or standards that must be satisfied by watershed management. It must use staff assigned by the governor, state agencies' staff, and staff from institutions of higher education. The DOE may contract out the technical assistance in certain instances and must conduct an annual workshop for planning units. The lead state representative must assist planning units in ensuring that the management developed is coordinated with, and consistent with, that of other planning units that share common borders or major stream basins. The state must provide mediation services to resolve disputes between planning units.

DOE Rules. The DOE may adopt its implementing rules that have been approved by counties as part of integrated watershed management and may adopt rules when necessary for providing grant monies or to set minimum instream flows identified by consensus either by the regular rules adoption process, the expedited rules adoption process, or through a rules adoption process that uses the public hearings and notice provided by the planning unit and the county as a substitute for the regular rules adoption requirements. Such rules do not constitute significant legislative rules, and do not require the preparation of small business economic impact statements.

Prohibitions. Watershed management developed in this manner may not contain provisions that (a) are in conflict with state statute, federal law, or tribal treaty rights; (b) impair or diminish in any manner existing water rights; (c) require a modification in

the basic operations of a federal reclamation project the water right of which has a priority (seniority) date that is earlier than the effective date of the bill, or alter in any manner whatsoever the quantity of water available under the water right for the project; (d) affect an ongoing adjudication of water rights; (e) modify a waste discharge permit issued under water pollution laws; or (f) modify actions taken to protect or enhance fish habitat if the actions are part of an approved habitat conservation plan or similar agreement. Nothing in this legislation may be construed as affecting or impairing in any manner whatsoever water rights existing before the effective date of the legislation.

Other. A county or conservation district is considered to have territory within a management area only if the territory of the county or district located in one of the WRIA's in the area constitutes at least 15% of the area of the WRIA. All state agencies with rule-making authority for programs that affect watershed management developed under this process must review those rules and programs for consistency with this watershed process and make recommendations to the Legislature for any necessary statutory changes.

EFFECT OF SENATE AMENDMENT(S):

Watershed Planning

Local governments may still choose to conduct watershed planning, but instead of being required to have components for water quantity, water quality, habitat, and instream flows, only a water quantity component is required. The water quantity component must include strategies for increasing water supplies in the management area, but the entire plan is no longer void if these strategies are not included. The express prohibition against less than WRIA-wide planning, except for the two state pilot programs, is removed. An examination of existing data related to the impact of fresh water on marine water quality is added to the water quality component. Specific components related to habitat, such as recommended means of monitoring the effect of projects, are deleted.

Initiating Watershed Planning

The group of initiating governments is modified. Watershed planning is initiated with the concurrence of all counties within the WRIA, the largest city or town within the WRIA, and the water supply utility obtaining the largest quantity of water from the WRIA. These entities designate the lead agency for the planning effort. If all these entities agree to proceed with watershed planning, they must invite all tribes with reservation lands within the management area to participate. The tribes which accept the invitation become part of the initiating governments.

The initiating governments must work with state, local, and affected tribal governments in developing a planning process. The requirement for a public meeting to discuss the appointment of a planning unit and coordination with existing efforts is made permissive

rather than mandatory. The representation on the planning unit no longer requires specific interests to be represented, but does require a wide range of water resource interests to be represented.

State agencies are now only represented on the planning units as determined by the initiating governments in consultation with the Governor's office. The designation by the Governor of a lead representative for the state agencies on the planning unit so that the agencies speak with one voice is deleted. Technical assistance by the state may only be provided at the request of and to the extent desired by the planning unit. Language regarding technical assistance in determining the use of best available science is deleted.

Minimum Instream Flows

Initiating governments may choose by a majority vote to include a minimum instream flow component, instead of a requirement for minimum instream flows to be set for the principle streams in the WRIA. If minimum instream flows have already been set for a stream, a unanimous vote of all government members and tribes on the planning unit is required to request the Department of Ecology to modify the flows. The approval process for minimum instream flows is modified. Approval of instream flows is achieved if all government and tribal members on the planning unit who are present unanimously agree to support the proposed flows, and a majority of the other interests on the planning unit vote in favor of the proposed flows.

The priority date for new minimum instream flows is established at two years after the date when the planning unit first received funding from the Department of Ecology, except that the planning unit can take a unanimous vote to establish some other priority date. The priority date cannot be later than the effective date of the rule establishing the flow. The Department must consult with affected tribes in the management area before setting instream flows. Flows which have already been established, but which are modified, retain the same priority date previously established by rule for that portion of the minimum flow.

Approval of Watershed Planning

Approval of a watershed plan by the planning unit is achieved if there is agreement by all the units of government on the planning unit and a majority of nongovernmental interests on the planning unit also approve. If the planning unit receives funding from the Department of Ecology beyond the initial organizing grant, a proposal approved by the planning unit must be submitted to the counties for approval within four years of when funding was first received. Provisions pertaining to receiving recommendations from the Department or tribes regarding conflicts with state or federal law, mediation, and declaratory judgement are deleted. State agencies must adopt by rule the obligations which are not only binding on state agencies, but the obligations which are binding upon county governments.

Funding

Initial organizing grants for multi-WRIAs are increased from \$50,000 to \$75,000. A second grant is available in the amount up to \$200,000 for a watershed assessment. A third grant in the amount up to \$250,000 is available for developing a watershed plan. The requirement for preparing a detailed proposed budget is deleted. The priority given to applications in watersheds which have aquatic species listed under the Endangered Species Act, is modified to include proposed listings under the Endangered Species Act.

Effective Date

The emergency clause is deleted.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately. However, the bill is null and void if not funded in the budget.

Testimony For: (Agriculture & Ecology) The bill is complex, but it addresses the comments provided to the Five Corners in their public hearing. It is a step in the right direction. The bill puts local and state people together in a collaborative forum to address watershed issues. Cities appreciate having a role in initiating watershed planning and controlling their obligations under it. The bill fits the counties' requirements in regard to allowing, but not requiring, watershed planning, addressing both water quality and water quantity, acknowledging existing and on-going efforts, providing state funding for planning and technical support, and not allowing a state review for approval at the end of the process.

(Appropriations) The original bill was the result of bipartisan negotiations with the House of Representatives, the Senate and the Department of Ecology. Interest groups expressed concerns about the bill, and it was placed on hold. Interested parties are now providing input and the bill is being rewritten to address their concerns.

Testimony Against: (Agriculture & Ecology) There needs to be a commitment to provide sufficient funding. It should be clearer that if watershed planning is not done under this process, the state will do it. The DOT's watershed mitigation program should be woven into the bill. The exemption for HCP's and forest practices should be clarified. The planning unit's activities should be open public meetings with public input. The collaborative effort used in a hydroelectric re-licensing procedure in the northwest gets balanced results. Water supply utilities need more certainty that their rights and interties will not be disrupted. The bill needs to state more clearly what the goals of a watershed plan are. Growth management requirements and the availability of

an adequate water supply should be linked. The deadline for setting instream flows should be lengthened. Private land ownership should be acknowledged in the process. Existing water rights and completed and ongoing adjudications must not be overridden. State funding for implementation is needed. The tribes negotiate matters with other sovereign governments, such as the state and federal governments, not with local governments. This bill should be clearly focused on fisheries problems. The Yakima Watershed Council has been innovative; it should be protected. Without a more balanced hydraulic continuity policy, the permit system will continue to be locked up. Obligations should not be created for special purpose districts or private landowners without their agreement. Using existing groups as a planning unit should be the highest priority. Conservation groups must be guaranteed a place at the planning table. Implementation is needed for existing plans. Add flood plain management as an element of the plan.

(Appropriations) There are no clear standards. Local communities will have difficulties with complex, technical decisions. The best available science is not included in the plan.

Testified: (Agriculture & Ecology) Tom Fitzsimmons, Washington Department of Ecology (in favor); Dave Williams, Association of Washington Cities; Paul Parker, Washington State Association of Counties; Jerry Alb, Washington Department of Transportation; Tim Boyd, Washington Forest Protection Association; Walter Cantor, Washington State Association of Sewer and Water Districts; Bill Henkel and Claude Oliver, Tri-County Water Resource Agency; Kristen Harte, Washington PUD Association (Pro with concerns); Al Aldrich, Snohomish County PUD (Pro with concerns); Dave Arbaugh, Kitsap and Chelan County PUD's; Steve Lindstrom, SnoKing Water Districts Association; Bill Robinson, NWSSC (commented); Dave Ducharme, Northwest Hydroelectric Association; Dan Pfeiffer, Washington Water Power; Diana Gail, Seattle Public Utilities (Pro with concerns); Doug Levy and Jim Miller, City of Everett (Pro with concerns); Mary Burke, Washington Cattlemen's Association (Con); Steve Robinson, Northwest Indian Fisheries Commission; Dawn Vyvyan, Jerry Meninick, and Harris Teo, Jr., Yakama Indian Nation (Con); Randy Scott, Quinault Indian Nation Kathleen Collins, Washington Water Policy Alliance (Pro); Dick Ducharme, Yakima Growers and Shippers, Wenatchee Traffic Association, Building Industry Association; Karla Carlson, Muckleshoot Indian Tribe (Con); Judy Turpin, Washington Environmental Council (Con); John Rosapepe, Sierra Club (Con); Bruce Wishart, People for Puget Sound; Lois Lopez; Dave Palmer, Chehalis River Council; Eric Johnson, Public Ports Association; Scott Hazelgrove, Association of Washington Business (Pro with concerns).

(Appropriations) Representative Chandler, prime sponsor; Tom Fitzsimmons, Department of Ecology; Dawn Vyvyan, Yakima Nation (pro); and Bruce Wishart, People for Puget Sound (con).