

HOUSE BILL REPORT

2SHB 2054

As Passed Legislature

Title: An act relating to water resource management.

Brief Description: Authorizing local watershed planning and modifying water resource management.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Chandler, Clements, Mastin and Honeyford).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/24/97, 2/26/97, 3/5/97 [DPS];
Appropriations: 3/8/97 [DP2S(w/o sub AGECE)].

Floor Activity:

Passed House: 3/14/97, 61-35.
Senate Amended.
House Insisted on Position.
Senate Receded.
Senate Amended.
House Concurred.
Passed Legislature.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Delvin; Koster; Mastin and Sump.

Minority Report: Without recommendation. Signed by 4 members: Representatives Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper and Regala.

Staff: Kenneth Hirst (786-7105).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Ecology. Signed by 19 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; Doumit, Assistant Ranking Minority Member; Benson; Carlson; Cooke; Crouse; Grant; Lambert; Lisk; Mastin; McMorris; Parlette; D. Schmidt; Sehlin; Sheahan and Talcott.

Minority Report: Do not pass. Signed by 11 members: Representatives H. Sommers, Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Chopp; Cody; Keiser; Kenney; Kessler; Linville; Poulsen; Regala and Tokuda.

Staff: Nancy Stevenson (786-7137).

Background: Water Resource Management - General. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water are established under a permit system. However, certain uses of groundwater not exceeding 5,000 gallons per day are exempted from this permit requirement. The permit system is based on the prior appropriation doctrine that "first in time is first in right." 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).

Water Resources Inventory Area (WRIA) Planning. 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 WRIsAs.

Groundwater Planning. The groundwater code permits the DOE to designate and manage groundwater areas, subareas, or depth zones to prevent the overdraft of groundwaters. In 1985, legislation was enacted that permits groundwater management studies to be initiated locally and allows local governments to assume the lead agency role in developing local groundwater management programs.

Interties. Public water system interties were expressly acknowledged by statute in 1991, and new interties were authorized under certain circumstances. By definition, interties do not include the development of new sources of supply to meet future demand.

Summary of Bill: WRIA Planning. The county with the largest area within a WRIA, the city obtaining the largest amount of water from WRIA, and the largest water supply utility in the WRIA may jointly and unanimously choose to initiate local water resource planning for the WRIA. If planning is conducted for the WRIA, one

planning unit for the WRIA is to be appointed as follows: one member representing each county in the WRIA, appointed by the county; one member for each county in the WRIA representing collectively all cities in the WRIA, appointed by the cities jointly; one member for each county in the WRIA representing collectively all public water supply utilities other than cities' utilities in the WRIA, appointed by the utilities jointly; one member representing collectively all conservation districts in the WRIA, appointed by the districts jointly; four members representing the general citizenry, three appointed by the counties jointly, and 1 appointed by the cities jointly; and nine members representing various interest groups, six appointed by the counties jointly, and three appointed by the cities jointly. If one or more federal Indian reservations are in the WRIA, one representative of the tribal government of each reservation is invited to be appointed to the planning unit. One representative of the departments of Ecology, Fish and Wildlife, and Transportation are members of the planning unit and share one vote. In addition, the largest water purveyor in a WRIA is to be represented on a planning unit for a WRIA in King, Pierce, Snohomish, or Spokane counties, whether the main offices of the purveyor are or are not located in the WRIA. Further, the members representing the counties, cities, and water utilities may unanimous vote add up to five additional members representing interest groups and the general citizenry. In lieu of this membership, the counties with territory in the WRIA may choose as the WRIA planning unit an existing planning unit where water resource planning efforts have commenced before the effective date of the bill.

For a WRIA in King, Pierce, Snohomish, or Spokane counties, the water purveyor using the largest amount of water from the WRIA may choose to be the lead agency for WRIA planning. Otherwise and elsewhere, the counties in the WRIA choose the lead agency from among the governmental entities in the WRIA. The lead agency provides staff support for the planning unit.

Procedures for conducting multi-WRIA planning and for appointing the members of one planning unit for the multi-WRIA area are established. No planning unit appointed for WRIA planning may possess the power of eminent domain.

A county must have more than 15 percent of the area of a WRIA within its boundaries to be considered to be a county with territory in the WRIA for the development of plans. Certain qualifications for the members of the planning unit are listed. Two of the members representing the general citizenry must be water-right holders. The planning unit is to begin work when two-thirds of its eligible members have been appointed. If a member of a WRIA planning unit has a certain number of unexcused absences, the member's position on the planning unit is considered to be vacant.

WRIA plans may not effect in any manner a general adjudication of water rights. Such a plan may not impair or diminish a water right that exists prior to the adoption of the plan or be inconsistent with federal reclamation projects or with stream flows

or conditions set for federally licensed hydropower projects. The plan cannot establish standards for water quality or regulate water quality, directly or indirectly. A plan may not be developed such that its provisions are in conflict with state statute or federal law. WRIA plans must be consistent with and not duplicate efforts already under way in the WRIA, including those under forest practices laws and rules. The bill cannot affect ongoing efforts to develop new resources and the sharing of existing resources. No moratorium may be imposed on the DOE's water resource decision-making solely because of ongoing planning efforts or the absence of a plan or planning effort. New planning units must recognize efforts already in progress.

All meetings of a WRIA planning unit are to be conducted as open public meetings. Some time must be set aside at the end of each meeting of a planning unit for public comments. The objective of a planning unit is to reach agreement and its procedures for decision-making are to provide that making decisions by two-thirds majority voting will be used only if achieving full agreement has not been successful.

Contents of the Plan. Each plan must include an assessment of water supply and use in the WRIA; an identification of the water needed collectively for future uses; a quantitative description of the groundwater and surface water available for further appropriation; strategies for increasing water supplies in the WRIA; an identification of areas that provide for the recharge of aquifers from the surface and areas where aquifers recharge surface bodies of water; and an identification of areas where voluntary water-related habitat improvement projects or voluntary transactions providing for the purchase of such habitat or easements would provide the greatest benefit to water-related habitat in the WRIA, and a prioritization of the areas based on their potential for providing such benefits. A planning unit cannot set instream flows for the main stem of the Columbia River or the Snake River. It has the authority to set instream flows on other rivers and streams and to set levels for lakes in its planning area only by a unanimous recorded vote of all voting members. It may recommend instream flow and lake levels by two-thirds majority vote.

Plan Approval. Upon completing a proposed water resource plan for the WRIA, the planning unit must provide notice for and conduct at least one public hearing in the WRIA on the proposed plan. The planning unit then submits the plan to the DOE and to the tribal council of each reservation with territory in the WRIA. The DOE must provide advice about any parts of the plan that are in conflict with state statute or federal law and may provide other recommendations. The WRIA planning unit must consider the recommendations of the DOE and the tribal councils and may alter the plan to respond to the recommendations by a two-thirds majority vote. The WRIA planning unit must approve a water-resource plan for the WRIA by a two-thirds majority vote of the members of the planning unit. An approved plan is then submitted to the counties with territory within the WRIA for approval. The legislative authority of each of the counties with territory within the WRIA must provide notice for and conduct at least one public hearing on the WRIA plan. The

counties, in joint session, may approve or reject the plan, but may not amend the plan.

If the plan is approved by the members of the legislative authorities, the plan is transmitted to the DOE. The DOE must adopt rules giving force and effect to the approved WRIA water-resource plan. If the DOE finds that a conflict with state statute or federal law has not been removed by the planning unit, the DOE and the planning unit must submit the conflict to mediation. If mediation does not resolve the conflict, the DOE may request the local superior court to rule on conflicts with state statute or federal law in the plan through a declaratory judgement. A decision of the court is reviewable. Instream flows established by the plan replace those set by the DOE. Any action taken by a state agency regarding water resources in a WRIA for which such a plan has been adopted must be taken in a manner that is consistent with the plan.

Permit Processing Deadline. If an environmental impact statement (EIS) is not requested for an application, the deadline for processing water right permit applications for water in an area for which a WRIA plan has been adopted is 180 days from the date a properly completed application is filed with the DOE. The deadline for processing an application filed after July 1, 1999 for water in an area for which a WRIA plan has not been adopted is one year. These deadlines do not include the time needed to supply information in response to one request by the DOE for additional information. If an EIS must be prepared regarding an application to appropriate water, the DOE must grant or deny the application within 90 days of the date the final EIS is available. The DOE must report to the legislature by January 1, 1999, on the status of processing applications.

Funding. A WRIA planning unit may apply to the DOE for funding assistance for developing a water-resource plan for the WRIA. The DOE is to provide a maximum of \$500,000 per WRIA for each planning unit applying in this manner from appropriations made expressly for this purpose. Preference is given to planning units conducting multi-WRIA planning. If a planning unit receives this funding, it must approve a plan for submittal to the counties within four years or the DOE must develop and adopt a plan for the WRIA or multi-WRIA area.

Local government is not liable for water planning except for a conflict with state or federal law about which it received notice from the state during the planning process.

Storage; General Adjudications. The development of multipurpose water storage facilities is to be a high priority, and state agencies, local governments, and WRIA planning units must evaluate the potential for and benefits and effects of storage. A WRIA planning unit may request that a general adjudication of water rights be conducted for its WRIA or a portion of its WRIA.

Water Purveyors. The authorized uses of an intertie include the exchange of acquired water between public water systems. Interties are no longer prohibited from including the development of new sources of water supply to meet future demand. The DOE may not deny or limit a change-of-place of use for an intertie on the grounds that the holder of a permit has not yet put all the water authorized in the permit to beneficial use. For an intertie to be used as a primary or secondary source of water supply or for the development of new sources to meet future demand, the receiving water systems must make efficient use of existing water supply and the provision of water must be consistent with local land use plans. A pre-1991 intertie may be used to its full design or built capacity within the most recently approved retail and/or wholesale service area.

If a public water system, federal reclamation project, or irrigation district is providing water under a certificated water right for its municipal, project, or district purposes, the instantaneous and annual withdrawal rates specified in the certificate are deemed valid and perfected. If any of the provisions of the bill regarding the development, adoption, or effect of WRIA plans, or regarding the permit processing deadlines is vetoed, these provisions regarding interties and water purveyors' rights are null and void.

Relinquishment. A water right is not relinquished for nonuse if the right is claimed for a determined future development that takes place at any time within a 15-year period from the date of the most recent beneficial use of the right. A water right is not relinquished for nonuse if the nonuse is the result of water efficiency or the result of processing a transfer of a water right to use by a public water supplier for municipal purposes.

General Permits. The DOE is directed to develop a streamlined, general permit system for certain uses of water. The use must consume less than 5,000 gallons of water per day. Water diverted from a stream or drawn from an aquifer must, following use, be discharged back into or near the point of diversion or withdrawal and, when discharged, must meet state water quality standards. An application for such a permit must be processed within 120 days.

Appeals. A party appealing a water quantity decision of the DOE may elect an informal or a formal hearing before the Pollution Control Hearings Board (PCHB). An informal hearing consists of mediation and may include fact finding if a settlement agreement is not reached. After the informal hearing, a person may request a formal hearing by the PCHB or may appeal the water quantity decision directly to the local superior court. An appeal of a water quantity decision to superior court is heard de novo, but in an appeal after an informal hearing by the PCHB, no party may raise an issue that was not raised and discussed as part of the fact finding hearing.

Transfers. A change in the place of use, point of diversion, or purpose of use of a water right to allow the irrigation of additional acreage or the addition of new uses may be permitted if the change results in no increase in the annual consumptive quantity of water used under the water right. The "annual consumptive quantity" is the estimated or actual annual amount of water diverted under the water right as that amount is reduced by the estimated annual amount of return flows, averaged over the most recent five-year period of continuous beneficial use of the water right, or, for a groundwater right, averaged over the period of actual use if it is less than five years.

Appropriation: None.

Fiscal Note: Requested on February 20, 1997.

Effective Date Ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Testimony For (original bill): (Agriculture & Ecology) (1) The people of the state have lost millions of dollars in drought damage and millions of dollars in flood damage. We need water planning. (2) Local planning efforts have begun in a number of watersheds. The recommendations of these groups can be given to the planning units created under the bill. (3) Part of the solution to the hydraulic continuity problems faced in the state is good watershed planning. (4) The bill's emphasis on locally conducted planning and local assessment of water availability, its financial support for local water planning, and the support it provides to the rights of water purveyors are the correct approach.

(Appropriations) (substitute bill) Local watershed planning is the key part of the bill. While the \$500,000 in planning assistance will be more than enough in some areas, for complex urban watersheds it will not be enough. In complex watersheds, additional support will come from local governments and private contributions. Funding will be used for studies, data collection, data management, and groundwater mapping as well as providing for a public process. It is important to support those entities that have already started planning. After plans are completed there will be a need for implementation funding.

The intertie provisions are consistent with previous legislative direction and the objectives of the Department of Health for water system planning.

Water quantity and water quality planning efforts should be integrated.

Testimony Against (original bill): (Agriculture & Ecology) (1) Tribal representation is needed on the local planning unit. The tribes should be treated as units of government, not simply part of the general citizenry. (2) Greater flexibility in

determining who is at the planning table should be granted. If local entities cannot agree on the composition of a planning unit, the state-provided composition should then be used. (3) Instream flows should not be set locally. (4) Plans need to accommodate growth. (5) Anadromous fish runs are a statewide issue, not an issue to be settled locally. (6) The state must consider its obligations to tribal treaty rights and the role of tribes as co-managers of fish resources with the state. The bill is on a collision course with tribal rights, particularly with regard to instream flows. (7) The tribes should be consulted regarding water storage proposals made under the bill. (8) The bill transfers state policy-making to local government. (9) Voting should be used to make decisions only if attempts at reaching consensus fail. (10) The state should be more than an observer to the planning. All persons who wish to participate should be allowed to do so. (11) Financial assistance for the implementation of local plans is needed.

(Appropriations) (substitute bill) There are significant changes in the substitute bill; however, the issue needs more work. The \$500,000 is helpful but won't fund the completeness that is needed. Basin assessments must also be done.

Testified (original bill): (Agriculture & Ecology) Paul Parker, Washington State Association of Counties; Chuck Klarich, Tri County Water Resource Agency; Bob Mack, city of Tacoma and Bellevue Public Utilities Department; Doug Levy, city of Everett Public Utilities Department (in favor). John Kounts and Tony Minehardt, Washington Public Utility District Association; and Dave Williams, Association of Washington Cities (commented on the bill). Randy Scott, Quinault Indian Nation; Dawn Vyvyan, Yakima Indian Nation; Greg Stewart, Washington Rivers Council (opposed); and Bill Robinson, Trout Unlimited (commented on the bill).

(Appropriations) Bill Alkire, Department of Ecology (concerns); Kathleen Collins, Washington Water Policy Alliance; David Monthie, Department of Health; Paul Parker, Washington State Association of Counties (all pro); and Judy Turpin, Washington Environmental Council (con).