

FINAL BILL REPORT

ESHB 2514

PARTIAL VETO

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Synopsis as Enacted

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).

House Committee on Agriculture & Ecology

House Committee on Appropriations

Senate Committee on Agriculture & Environment

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. 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).

The DOE may award grants to planning units for watershed planning, but there is no statutory criteria which specifies what constitutes a planning unit or an acceptable watershed plan.

Summary: Local governments may choose to conduct watershed planning. The scope of the watershed planning must include water quantity elements, and may include elements pertaining to water quality, the coordination or development of protection or enhancement of fish habitat, and the setting of minimum instream flows in the

watershed. Watershed planning may be conducted on a single WRIA or multi-WRIA basis.

Initiating Watershed Planning. Watershed planning may be initiated for a single WRIA 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. In a multi-WRIA area, watershed planning may be initiated with the concurrence of all counties within the multi-WRIA area, the largest city or town within each WRIA, and the water supply utility obtaining the largest quantity of water in each WRIA. These entities designate the lead agency for the planning effort and indicate how the planning effort will be staffed. If all these entities agree to proceed with watershed planning, they must invite any affected Indian tribes within the management area to participate. The tribes that 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 initiating governments may hold public meetings to develop a proposed composition of the planning unit and a proposed scope of work. The proposed composition of the planning unit must provide for representation of a wide range of water resource interests.

State agency representation on the planning units is determined by the initiating governments in consultation with the Governor's Office. Technical assistance by the state may only be provided at the request of and to the extent desired by the planning unit. State agencies may organize and agree on their representation on a planning unit.

Coordinating the Work of the Planning Unit. A planning unit must review the historical data such as fish runs, weather patterns, land use patterns, seasonal flows, and geographical characteristics of the management area, and also review existing planning, projects, and activities regarding natural resource management or enhancement in the management area. The planning unit must incorporate products of any efforts that are either completed or ongoing, as appropriate, in order not to duplicate efforts.

The planning unit is also encouraged to 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. If there are multiple projects, the planning group must give consideration to ranking projects that have the greatest benefit and schedule those projects to be implemented first.

Water Quantity Component. The water quantity component of watershed planning must include an assessment of water supply and use in the management area and the development of strategies for future use. The assessment must include: an estimate

of the surface and ground water present in the management area; an estimate of the surface and ground water available in the management area, taking into account seasonal and other variations; an estimate of the amount of water in the management area represented by claims in the water rights registry, water use permits, certificated rights, existing minimum instream flow rules, federally reserved rights, and any other rights to water; an estimate of the surface and ground water actually being used in the management area; an estimate of the water needed in the future for use in the management area; and an estimate of the surface and ground water available for further appropriation, taking into account minimum instream flows established or that will be established in the management area, including data necessary to evaluate necessary flows for fish.

The strategies for increasing water supplies in the management area may include, among other strategies, use of reclaimed water, aquifer recharge and recovery, and water conservation. The purpose of the strategies is to have sufficient water to satisfy minimum instream flows for fish and to provide for future out-of-stream uses.

Water Quality and Habitat Components. The watershed planning component for water quality, if included by the initiating governments, must contain: an examination, based on existing government studies, of the degree to which legally established water quality standards are being met in the management area; an examination based on existing government studies of the causes of water quality violations in the management area; an examination of the legally established characteristic uses of each of the nonmarine bodies of water in the management area; an examination of any total maximum daily load (TMDL) established for nonmarine bodies of water in the management area, unless a TMDL process commenced in the management area before the watershed planning began; and recommended means of monitoring whether actions taken to implement the approach to improve water quality are sufficient to achieve compliance with water quality standards.

If the initiating governments include a habitat component as part of the watershed planning process, the watershed plan must be coordinated or developed to protect or enhance fish habitat in the management area. Planning for habitat must be integrated with strategies developed under other processes to respond to listings of fish species under the federal Endangered Species Act (ESA).

Instream Flows. The initiating governments may choose by a majority vote to include a minimum instream flow component as part of the watershed plan. 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 DOE to modify the flows. If minimum instream flows have not been set, the department is directed to attempt to achieve consensus and approval among the members of the planning unit regarding the instream flows. Approval of instream flows is achieved if all government and tribal members on the planning unit who are present for a

recorded vote 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 DOE, except that the planning unit may establish some other priority date by a unanimous vote. 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. 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.

The DOE must use rulemaking to set minimum instream flows. The DOE may adopt these rules 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 to the greatest extent possible. Such rules do not constitute significant legislative rules, and do not require the preparation of small business economic impact statements.

Approval of Watershed Plan. 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. The planning unit submits the watershed plan to each of the counties with territory in the management area. If the planning unit receives funding from the DOE beyond the initial organizing grant, a proposal approved by the planning unit must be submitted to the counties for approval within four years of the date that funding was first received.

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. After the public hearings, the county legislative authorities must convene a joint session to consider the watershed plan. The counties may approve or reject the watershed plan, but may not amend it. The watershed plan must be approved by each of the county legislative authorities with territory in the management area.

If a proposed integrated watershed management is not approved, it is returned to the planning unit with recommendations for revisions. If approval of the revised plan is not achieved, the process is terminated.

A planning unit cannot add an element to its watershed plan 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 element that creates the obligation, as evidenced by a recorded vote. If the watershed plan is approved by the planning unit and the counties, and the plan creates obligations for state agencies, the obligations are binding on the state agencies and the agencies must adopt implementing rules and take other actions to fulfill their obligations as soon as possible. State agencies must also adopt by rule the obligations that are binding upon county governments. The counties must adopt any necessary implementing ordinances and take other actions to fulfill obligations that are binding upon them.

Limitations on Watershed Plans. Watershed plans developed in this manner may not contain provisions that: (1) are in conflict with state statute, federal law, or tribal treaty rights; (2) impair or diminish in any manner existing water rights; (3) 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 act, or alter in any manner whatsoever the quantity of water available under the water right for the project; (4) affect an ongoing general adjudication of water rights; (5) modify a waste discharge permit issued under water pollution laws; (6) modify or require the modification of activities or actions taken or intended to be taken under a habitat restoration work schedule; or (7) modify or require the modification of activities or actions taken to protect or enhance fish habitat if the actions are part of an approved habitat conservation plan or similar agreement, or part of a water quality program adopted by an irrigation district or a board of joint control.

These provisions may not create any obligations or restrictions on forest practices that are in addition to or inconsistent with the Forest Practices Act and its implementing rules. Watershed plans may contain recommendations for changing existing local ordinances or state rules, but may not change the ordinances or rules. These provisions may not be interpreted as authorizing or directing the DOE to establish a moratorium on water rights processing. The DOE may not conduct water and water resources related development planning or comprehensive state water resources program planning that conflicts with these provisions.

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 for a single WRIA and up to \$75,000 for a multi-WRIA; grants of up to \$250,000 per WRIA for watershed assessments; and grants of up to \$250,000 per WRIA for the development of a watershed plan. The DOE is directed to use the statutory eligibility criteria rather than rules, policies, or guidelines when evaluating grant applications.

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 or proposed to be 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 or proposed listings, and for which there is evidence of an inability to supply adequate water for population and economic growth; (4) applications from multi-WRIAs that propose to address fish habitat in watersheds with ESA listings, and for which there is evidence of an inability to supply adequate water for population and economic growth; and (5) applications from single WRIAs that propose to address fish habitat in watershed with ESA listings, and for which there is evidence of an inability to supply adequate water for population and economic growth.

The DOE may not impose any local matching requirements as a condition for grant eligibility or as a preference in receiving a grant.

The act is null and void unless funded in the budget.

Votes on Final Passage:

House 86 10
Senate 43 4 (Senate amended)
House 88 10 (House concurred)

Effective: June 11, 1998

Partial Veto Summary: The Governor vetoed sections which would prohibit the DOE from conducting water-related planning under other statutes that conflict with watershed plans developed under this act, and which stated that nothing in the act authorized or directed the DOE to establish a moratorium on water rights processing.