

SENATE BILL REPORT

2SHB 2054

As Reported By Senate Committee On:
Agriculture & Environment, April 3, 1997
Ways & Means, April 7, 1997

Title: An act relating to water resource management.

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

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

Brief History:

Committee Activity: Agriculture & Environment: 3/27/97, 4/3/97 [DPA, DNP].
Ways & Means: 4/7/97 [DPA, DNP].

SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

Majority Report: Do pass as amended.

Signed by Senators Morton, Chair; Swecker, Vice Chair; Newhouse, Oke and Rasmussen.

Minority Report: Do not pass.

Signed by Senators Fraser and McAuliffe.

Staff: Bob Lee (786-7404)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Hochstatter, Long, McDonald, Roach, Rossi, Schow, Swecker and Zarelli.

Minority Report: Do not pass.

Signed by Senators Fraser, Kohl and Spanel.

Staff: Cathy Baker (786-7708)

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 exempt 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 DOE to develop a comprehensive state water resources program for making decisions on future water resource allocation and use. The act permits DOE to develop the program in segments. Under the act, DOE has divided the state into 62 WRIsAs.

Groundwater Planning. The Groundwater Code permits 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.

Summary of Amended Bill: WRIA Planning. The county with the area residing within a WRIA may choose to initiate local water resource planning for WRIA. If planning is conducted for WRIA, one planning unit for WRIA is to be appointed as follows:

- one member representing each county in WRIA, appointed by the county;
- one member for each county in WRIA (but not less than two) representing collectively all cities in WRIA, appointed by the cities jointly;
- two members representing collectively all public water utilities in WRIA, appointed by the utilities jointly;
- one member representing collectively all conservation districts in WRIA, appointed by the districts jointly;
- nine members representing various interest groups, appointed by the counties jointly.
- If one or more federal Indian reservations are in WRIA, the planning unit includes a tribal representative for each reservation, appointed by the tribes.
- Two representatives of state agencies appointed by the Governor are ex-officio members of the planning unit.
- In addition, the largest water purveyor in a WRIA is to be represented as an ex-officio member on a planning unit for a WRIA in King, Pierce, or Snohomish counties, whether the main offices of the purveyor are or are not located in WRIA.

Local governments, by majority vote, may modify the membership on the planning unit.

Except for multi-WRIA planning, the lead agency for WRIA planning is the county with the largest area in WRIA. The lead agency provides staff support for the planning process.

Procedures for conducting multi-WRIA planning and for appointing the members of one planning unit for the multi-WRIA area are established. The counties in a multi-WRIA area choose a governmental entity to act as the lead agency for WRIA planning. The entity

selected serves as the lead agency if it agrees to do so in writing. No planning unit appointed for WRIA planning may possess the power of eminent domain. In multi-WRIA planning units, the composition of the planning unit is similar to a single WRIA, except that there are four additional members representing the general citizenry, two of which 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 interfere in any manner with a general adjudication of water rights. Such a plan may not impair or interfere with a water right that exists prior to the adoption of the plan or with federal reclamation 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 or federal law.

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 consensus, with majority voting used if achieving consensus has not been successful.

Contents of the Plan. Each plan must include:

- an assessment of water supply and use in 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 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 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 propose instream flows on other rivers and streams in its planning area.

Plan Approval. Upon completing a proposed water resource plan for 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 provides interim approval of its proposed plan by a simple majority vote and submits the plan to DOE. DOE must conduct at least one public hearing on the plan. DOE must provide advice about any sections or subsections of the plan

that are in conflict with state or federal law and may provide other recommendations. WRIA planning unit must vote on each recommendation provided by DOE and on its advice, but is not required to adopt either. WRIA planning unit must approve a water-resource plan for 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 WRIA for approval. Upon receipt of the plan, the county must submit for review a copy to the tribal council of each reservation in the planning area. The tribal council may provide its comments to the county within 30 days. The legislative authority of each of the counties with territory within WRIA then must provide notice for and conduct at least one public hearing on 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 and implementing rules are transmitted to DOE. DOE must adopt the approved WRIA water-resource plan by rule. DOE may request the local superior court to rule on conflicts with state or federal law in the plan through a declaratory judgement. A decision of the court is reviewable.

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 DOE. The deadline for processing an application for water in an area for which a WRIA plan has not been adopted is two years. These deadlines do not include the time needed to supply information in response to one request by DOE for additional information. If an EIS must be prepared regarding an application to appropriate water, DOE must grant or deny the application within 90 days of the date the final EIS is available.

Funding. A WRIA planning unit may apply to DOE for funding assistance for developing a water-resource plan for the WRIA. DOE is to allocate grants to planning units based on demonstrated need and readiness to proceed. Preference is given to planning units conducting multi-WRIA planning. Preference also must be given to planning units that are intended to respond to Endangered Species Act listings and to address projected growth based on 20-year population projections.

Liability. 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 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.

Agriculture & Environment Amended Bill Compared to Substitute Bill: The Governor must appoint two representatives from state agencies to serve on the planning unit. For single WRIA planning units, the four members representing the general citizens are deleted and the interest group representatives are increased from six to nine. In addition to a tribal representative serving on the planning unit, a separate process to solicit tribal comment is

required by the county legislative authority prior to the county holding a public hearing on the plan. More flexibility is provided to counties to alter the composition of the planning unit. The planning group may propose adoption of new, or changes to existing, instream flows. The plan is also to include draft administrative rules that are necessary to implement the plan.

Provisions regarding municipal interties, perfection of water right certificates, and non-relinquishment of water rights are deleted. Thus, current statutory language is retained.

Ways & Means Amended Bill Compared to Agriculture & Environment Amended Bill: Provisions specifying the grant allocation per WRIA are removed. The overall funding level for watershed planning grants is provided through the appropriations process. The Department of Ecology is to allocate grants to local planning units based on demonstrated need and readiness to proceed.

Appropriation: None.

Fiscal Note: Requested on March 19, 1997.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For (Agriculture & Environment): There is general agreement that water resource planning is needed and that it is best to be done on a watershed basis. Planning is needed to address future needs for water due to population growth and planning requirements of the Growth Management Act, to respond to listing of fish under the Endangered Species Act and to better manage water.

Testimony Against (Agriculture & Environment): A variety of concerns were expressed regarding the composition of local planning groups, the role of Indian tribes in the planning process, the role of the state versus local citizens, the decisionmaking process, and possibility of conflicting with state or federal law.

Testified (Agriculture & Environment): PRO: Kathleen Collins, Washington Water Policy Alliance; Dick Ducharme, Yakima Growers and Shippers/Building Industry Association of WA; Steve Lindstrom, Sno-King Water District Coalition; CON: Ron Shultz, National Audubon Society; Gregory Stewart, Rivers Council of WA; Judy Turpin, Washington Environmental Council; Laura Hitchcock, Sierra Club; Mark Burke, Washington Cattlemen's Association; Linda Crerar, Department of Ecology (con); NEUTRAL: Scott Barr; Judy Frolich, Washington State Association of Counties; Jim Miller/Dave Williams, City of Everett/AWC.

Testimony For (Ways & Means): The bill will provide a voluntary process for local communities to develop water resource plans. Several local governments have already begun such efforts; many others are ready to proceed with this type of planning process. State financial assistance is important. Planning costs will vary from watershed to watershed, depending on a number of factors.

Testimony Against (Ways & Means): The bill will have fiscal impacts on a variety of entities that will participate in the planning process. State agencies need funding in order

to carry out their responsibilities under the bill, including rule-making and hearing requirements. Tribes should have a greater role in the planning process.

Testified (Ways & Means): PRO: Kathleen Collins, Washington Water Policy Alliance; Paul Parker, Washington State Association of Counties; CON: Judy Turpin, Washington Environmental Council.