
HOUSE BILL 2257

State of Washington

57th Legislature

2001 Regular Session

By Representatives Clements and G. Chandler

Read first time . Referred to Committee on .

1 AN ACT Relating to drought conditions; and amending RCW 43.83B.410.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

3 **Sec. 1.** RCW 43.83B.410 and 1989 c 171 s 3 are each amended to read
4 as follows:

5 Upon the issuance of an order under RCW 43.83B.405, the department
6 of ecology is empowered to:

7 (1)(a) Authorize emergency withdrawal of public surface and ground
8 waters, including dead storage within reservoirs, on a temporary basis
9 and authorize associated physical works which may be either temporary
10 or permanent. The termination date for the authority to make such an
11 emergency withdrawal may not be later than the termination date of the
12 order issued under RCW 43.83B.405 under which the power to authorize
13 the withdrawal is established. The department of ecology may issue
14 such withdrawal authorization when, after investigation and after
15 providing appropriate federal, state, and local governmental bodies an
16 opportunity to comment, the following are found:

17 (i) The waters proposed for withdrawal are to be used for a
18 beneficial use involving a previously established activity or purpose;

1 (ii) The previously established activity or purpose was furnished
2 water through rights applicable to the use of a public body of water
3 that cannot be exercised due to the lack of water arising from natural
4 drought conditions; and

5 (iii) The proposed withdrawal will not reduce flows or levels below
6 essential minimums necessary (A) to assure the maintenance of fisheries
7 requirements through flows or levels that have been specified prior to
8 the issuance under RCW 43.83B.405 of the order regarding drought
9 conditions, and (B) to protect federal and state interests including,
10 among others, power generation, navigation, and existing water rights.
11 The interests and rights to be protected under this subsection
12 (1)(a)(iii)(B) are those that have been quantified either through the
13 issuance of a permit or certificate under this chapter or chapter 90.44
14 or 90.46 RCW or the filing of a water right claim under chapter 90.14
15 RCW;

16 (b) All withdrawal authorizations issued under this section shall
17 contain provisions that allow for termination of withdrawals, in whole
18 or in part, whenever withdrawals will conflict with flows and levels as
19 provided in (a)(iii) of this subsection. Domestic and irrigation uses
20 of public surface and ground waters shall be given priority in
21 determining "beneficial uses." As to water withdrawal and associated
22 works authorized under this subsection, the requirements of chapter
23 43.21C RCW and public bidding requirements as otherwise provided by law
24 are waived and inapplicable. All state and local agencies with
25 authority to issue permits or other authorizations for such works
26 shall, to the extent possible, expedite the processing of the permits
27 or authorizations in keeping with the emergency nature of the requests
28 and shall provide a decision to the applicant within fifteen calendar
29 days of the date of application. All state departments or other
30 agencies having jurisdiction over state or other public lands, if such
31 lands are necessary to effectuate the withdrawal authorizations issued
32 under this subsection, shall provide short-term easements or other
33 appropriate property interest upon the payment of the fair market
34 value. This mandate shall not apply to any lands of the state that are
35 reserved for a special purpose or use that cannot properly be carried
36 out if the property interest were conveyed;

37 (2) Approve a temporary change in purpose, place of use, or point
38 of diversion, consistent with existing state policy allowing transfer
39 or lease of waters between willing parties, as provided for in RCW

1 90.03.380, 90.03.390, and 90.44.100. However, compliance with any
2 requirements of (a) notice of newspaper publication of these sections
3 or (b) the state environmental policy act, chapter 43.21C RCW, is not
4 required when such changes are necessary to respond to drought
5 conditions as determined by the department of ecology. An approval of
6 a temporary change of a water right as authorized under this subsection
7 is not admissible as evidence in either supporting or contesting the
8 validity of water claims in *State of Washington, Department of Ecology*
9 *v. Acquavella*, Yakima county superior court number 77-2-01484-5 or any
10 similar proceeding where the existence of a water right is at issue.

11 (3) Employ additional persons for specified terms of time,
12 consistent with the term of a drought condition, as are necessary to
13 ensure the successful performance of the activities associated with
14 implementing the emergency drought program of this chapter.

15 (4) Revise the drought contingency plan previously developed by the
16 department; and

17 (5) Acquire needed emergency drought-related equipment.

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