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**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1836**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** House General Government & Information Technology (originally sponsored by Representatives Stanford, Blake, Lytton, Walkinshaw, Gregerson, and Tarleton)

AN ACT Relating to state drought preparedness; amending RCW 43.83B.400, 43.83B.405, 43.83B.410, 43.83B.415, 43.83B.360, 43.83B.430, 90.86.020, 90.86.030, and 90.03.280; adding a new section to chapter 43.83B RCW; adding new sections to chapter 90.86 RCW; adding a new section to chapter 43.21C RCW; repealing RCW 90.86.010; and declaring an emergency.

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

NEW SECTION. **Sec.**  A new section is added to chapter 43.83B RCW to read as follows:

The definitions in this section apply throughout RCW 43.83B.400 through 43.83B.420 unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Drought condition" means that the water supply for a geographical area, or for a significant portion of a geographical area, is below seventy-five percent of normal and the water shortage is likely to create undue hardships for various water uses and users.

(3) "Emergency agricultural water supply funds" means moneys appropriated from the state emergency water projects revolving account created under RCW 43.83B.360.

**Sec.**  RCW 43.83B.400 and 1989 c 171 s 1 are each amended to read as follows:

It is the intent of the legislature to provide emergency powers to the department ((~~of ecology~~)) to enable it to take actions, in a timely and expeditious manner, that are designed to alleviate hardships and reduce burdens on various water users and uses arising from drought conditions. ((~~As used in this chapter, "drought condition" means that the water supply for a geographical area or for a significant portion of a geographical area is below seventy-five percent of normal and the water shortage is likely to create undue hardships for various water uses and users.~~))

**Sec.**  RCW 43.83B.405 and 1989 c 171 s 2 are each amended to read as follows:

(1)(a) Whenever it appears to the department ((~~of ecology~~)) that a drought condition either exists or is forecast to occur within the state or portions ((~~thereof~~)) of the state, the department ((~~of ecology~~)) is authorized to issue orders, pursuant to rules previously adopted, to implement the powers as set forth in RCW 43.83B.410 through 43.83B.420. ((~~The department shall, immediately upon the issuance of an order under this section, cause said order to be published in newspapers of general circulation in the areas of the state to which the order relates.~~))

(b) Prior to the issuance of an order under this section, the department ((~~shall (a)~~)) must:

(i) Consult with and obtain the views of affected federally recognized tribes and the federal and state government entities identified in the drought contingency plan periodically revised by the department pursuant to RCW 43.83B.410((~~(4), and (b)~~)) (2)(c);

(ii) Notify the joint legislative committee on water supply during drought created in RCW 90.86.020; and

(iii) Obtain the written approval of the governor.

(c) Orders issued under this section shall be deemed orders for the purposes of chapter 34.05 RCW and be published as appropriate by the department in any area of the state affected by the order.

(2)(a) Any order issued under subsection (1) of this section ((~~shall~~)) must contain a termination date for the order. The termination date ((~~shall be~~)) may not be later than one calendar year from the date the order is issued. Although the department may, with the written approval of the governor, change the termination date by amending the order, no such amendment or series of amendments may have the effect of extending its termination to a date which is later than two calendar years after the issuance of the order.

((~~(3)~~))(b) The provisions of this subsection (2) ((~~of this section~~)) do not preclude the issuance of more than one order under subsection (1) of this section for different areas of the state or sequentially for the same area as the need arises for such an order or orders.

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

(1)(a) Upon the issuance of an order under RCW 43.83B.405, the department ((~~of ecology is empowered to:~~

~~(1)(a)~~)) May authorize emergency withdrawal of public surface and ground waters, including dead storage within reservoirs, on a temporary basis and authorize ((~~associated physical works which may be~~)) either temporary or permanent associated physical works.

(b) The termination date for the authority to make ((~~such~~)) an emergency withdrawal under this section may not be later than the termination date of the order issued under RCW 43.83B.405 under which the power to authorize the withdrawal is established.

(c) The department ((~~of ecology~~)) may issue ((~~such~~)) an emergency withdrawal authorization only when, after investigation and after providing appropriate federal, state, and local governmental bodies an opportunity to comment, the following are found by the department:

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

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

(iii) The proposed withdrawal will not reduce flows or levels below essential minimums necessary ((~~(A)~~)) to ((~~assure~~)) ensure the maintenance of fisheries requirements((~~,~~)) and ((~~(B)~~)) to protect federal and state interests including, among others, power generation, navigation, and existing water rights((~~;~~

~~(b)~~)). In making a finding under this subsection relating to the requirements of fisheries, the department shall not limit its analysis to anadromous or commercial species only.

(d) All emergency withdrawal authorizations issued under this section shall contain provisions that allow for termination of withdrawals, in whole or in part, whenever withdrawals will conflict with flows and levels as provided in ((~~(a)~~)) (c)(iii) of this subsection.

(e) Domestic and irrigation uses of public surface and ground waters shall be given priority in determining "beneficial uses."

(f)(i) As to water withdrawal and associated works authorized under this subsection, the requirements of chapter 43.21C RCW and public bidding requirements as otherwise provided by law are waived and inapplicable.

(ii) All state and local agencies with authority to issue permits or other authorizations for ((~~such~~)) associated works shall, to the extent possible, expedite the processing of the permits or authorizations in keeping with the emergency nature of the requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

(iii) All state departments or other agencies having jurisdiction over state or other public lands, if ((~~such~~)) access to the lands are necessary to effectuate the withdrawal authorizations issued under this subsection, ((~~shall~~)) must provide short-term easements or other appropriate property interest upon the payment of the fair market value. This mandate shall not apply to any lands of the state that are reserved for a special purpose or use that cannot properly be carried out if the property interest were conveyed((~~;~~)).

(2) The department may also, upon the issuance of an order under RCW 43.83B.405:

(a)(i) Approve a temporary change in purpose, place of use, or point of diversion, consistent with existing state policy allowing transfer or lease of waters between willing parties, as provided for in RCW 90.03.380, 90.03.390, and 90.44.100. However, compliance with any requirements of ((~~(a)~~)) notice of newspaper publication of these sections or ((~~(b)~~)) the state environmental policy act, chapter 43.21C RCW, is not required when such changes are necessary to respond to drought conditions as determined by the department ((~~of ecology~~)).

(ii) An approval of a temporary change of a water right as authorized under this subsection is not admissible as evidence in either supporting or contesting the validity of water claims in *State of Washington, Department of Ecology v. Acquavella*, Yakima county superior court number 77-2-01484-5 or any similar proceeding where the existence of a water right is at issue.

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

((~~(4)~~)) (c) Revise the drought contingency plan previously developed by the department((~~; and~~)).

((~~(5)~~)) (d) Acquire needed emergency drought-related equipment.

**Sec.**  RCW 43.83B.415 and 1989 c 171 s 4 are each amended to read as follows:

(1)(a) The department ((~~of ecology~~)) is authorized to make loans, grants, or combinations of loans and grants, from emergency agricultural water supply funds when necessary to provide water to alleviate emergency drought conditions in order to ensure the survival of irrigated crops and the state's fisheries. ((~~For the purposes of this section, "emergency agricultural water supply funds" means funds appropriated from the state emergency water projects revolving account created under RCW 43.83B.360.~~))

(b) The department ((~~of ecology~~)) may make the loans, grants, or combinations of loans and grants, as matching funds in any case where federal, local, or other funds have been made available on a matching basis. The department may make a loan of up to ninety percent of the total eligible project cost or combination loan and grant up to one hundred percent of the total single project cost. The grant portion for any single project shall not exceed twenty percent of the total project cost except that, for activities forecast to have fifty percent or less of normal seasonal water supply, the grant portion for any single project or entity shall not exceed forty percent of the total project cost.

(c) No single entity shall receive more than ten percent of the total emergency agricultural water supply funds available for drought relief.

((~~These funds shall~~)) (d) Emergency agricultural water supply funds available for drought relief may not be used for nonagricultural drought relief purposes unless there are no other capital budget funds available for these purposes. In any biennium the total expenditures of emergency agricultural water supply funds for nonagricultural drought relief purposes may not exceed ten percent of the total of such funds available during that biennium.

(2)(a) Except as provided in (b) of this subsection, ((~~after June 30, 1989,~~)) emergency agricultural water supply funds, including the repayment of loans and any accrued interest, shall not be used for any purpose except during drought conditions as determined under RCW 43.83B.400 and 43.83B.405.

(b) Emergency agricultural water supply funds may be used on a one-time basis for the development of procedures to be used by state governmental entities to implement the state's drought contingency plan.

**Sec.**  RCW 43.83B.360 and 2009 c 564 s 938 are each amended to read as follows:

The proceeds from the sale of bonds authorized by RCW 43.83B.300((~~,~~)) and 43.83B.355 through 43.83B.375 shall be deposited in the state emergency water projects revolving account, hereby created in the state treasury, and shall be used exclusively for the purposes specified in RCW 43.83B.300, ((~~and~~)) 43.83B.355 through 43.83B.375, and 43.83B.415 and for the payment of expenses incurred in the issuance and sale of such bonds. ((~~During the 2009-2011 fiscal biennium, the legislature may transfer from the state emergency water projects revolving account to the state general fund such amounts as reflect the excess fund balance of the account.~~))

**Sec.**  RCW 43.83B.430 and 2011 c 5 s 911 are each amended to read as follows:

(1) The state drought preparedness account is created in the state treasury. All receipts from appropriated funds designated for the account and funds transferred from the state emergency water projects revolving account must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for drought preparedness and as provided in RCW 43.83B.415. ((~~During the 2009-2011 fiscal biennium, the legislature may transfer from the state drought preparedness account to the state general fund such amounts as reflect the excess fund balance of the account.~~))

(2) As part of drought preparedness, moneys in the account may be used for the negotiation of agreements or contracts before a drought is declared that identifies projects, measures, sources of water, and other resources that can be accessed during a drought to alleviate drought conditions that may affect public health and safety, drinking water supplies, agricultural activities, or fish and wildlife survival.

**Sec.**  RCW 90.86.020 and 2005 c 60 s 2 are each amended to read as follows:

(1) The joint legislative committee on water supply during drought is created.

(2) The committee shall consist of ((~~four senators and four representatives who shall be selected biennially as follows:~~

~~(1) The president of the senate shall appoint four members from the senate to serve on the committee, including the chair of the committee responsible for water resource issues. Two members from each major political party must be appointed.~~

~~(2) The speaker of the house of representatives shall appoint four members from the house of representatives to serve on the committee, including the chair of the committee responsible for water resource issues. Two members from each major political party must be appointed.~~

~~(3) The committee shall elect a chair and a vice chair. The chair shall be a member of the house of representatives in even-numbered years and a member of the senate in odd-numbered years.~~

~~(4) The presiding officer of the appropriate legislative chamber shall fill any vacancies occurring on the committee by appointment from the same political party as the departing member.~~

~~(5) Members shall serve until their successors are appointed as provided in this section, or until they are no longer members of the legislature, whichever is sooner~~)) eight legislators who shall be selected biennially as follows:

(a) The president of the senate shall appoint two members from each of the two largest caucuses of the senate.

(b) The speaker of the house of representatives shall appoint two members from each of the two largest caucuses of the house of representatives.

(c) In making appointments to the committee, the speaker of the house of representatives and the president of the senate must provide the chairs of the committees with jurisdiction over water resources with the opportunity to serve on the committee as one of the two respective caucus appointments.

(d) The speaker of the house of representatives or the president of the senate must fill any vacancies occurring on the committee by appointment from the same caucus as the departing member.

(3) The committee shall select a chair and a vice chair from among its membership. However, the chair must be a member of the house of representatives in even-numbered years and a member of the senate in odd-numbered years.

(4) Members of the committee shall serve until one of the following events occurs:

(a) A successor is appointed as provided in this section; or

(b) The member of the committee discontinues service in the legislative chamber from which the member was appointed.

**Sec.**  RCW 90.86.030 and 2010 1st sp.s. c 7 s 122 are each amended to read as follows:

(1) The joint legislative committee on water supply during drought shall convene from time to time at the call of the chair, or if no chair is currently designated, by a majority of committee members. The committee may convene under the following circumstances:

(a) When a drought conditions order under RCW 43.83B.405 is in effect((~~, or~~));

(b) When the chair determines((~~, in consultation with the department of ecology,~~)) that it is likely that ((~~such an~~)) a drought conditions order will be issued within the next year; or

(c) When the chair determines that state drought preparedness planning, including the building of legislative institutional knowledge of the topic and the receipt of information under subsection (2) of this section, would benefit from the convening of the committee.

(2)(a) The committee may:

(i) Request and review information relating to water supply conditions in the state, ((~~and~~)) economic, environmental, and other impacts relating to decreased water supply being experienced or anticipated, and flooding and other impacts of increased volatility of the water cycle;

(ii) Receive ongoing information from the department of ecology related to water supply conditions prior to a drought declaration and in years when a drought is not anticipated;

(iii) Provide nonbinding direction and advice to drought response entities;

(iv) Provide policy oversight for the use of moneys in, and assistance in developing budget requests for, the state drought preparedness account created in RCW 43.83B.430; and

(v) Coordinate with drought response entities in processing lessons learned from drought response activities, including years when a drought is declared and years when the decision is made to not declare a drought, and improve efforts to preemptively mitigate the impacts of a drought.

(b) The ((~~governor's~~)) executive water emergency committee identified in WAC 173-166-030 as it existed on the effective date of this section, the department of ecology, and other state agencies with water management or related responsibilities shall cooperate in responding to requests from the committee.

(3)(a) During drought conditions in which an order issued under RCW 43.83B.405 is in effect, the department of ecology shall provide to the committee no less than monthly a report describing drought response activities of the department and other state and federal agencies participating on the water supply availability committee identified in WAC 173-166-030 as it existed on the effective date of this section.

(b) The report ((~~shall~~)) from the department of ecology must include information regarding applications for, and approvals and denials of, emergency water withdrawals and temporary changes or transfers of, water rights under RCW 43.83B.410 and other information requested by the committee.

(4) When a drought declaration is not in effect, the department of ecology shall provide to the committee, by January 15th of each year, an assessment of predicted water supply for the coming year, along with, if necessary, updates to the prediction during the first half of the calendar year. This information may be provided in written or electronic form if the committee has no official plans to convene a meeting. The department of ecology may provide written or electronic submissions to the staff of the committee identified in section 10 of this act.

(5) The committee ((~~from time to time shall~~)) may, if deemed appropriate by a majority of the committee, make recommendations to the appropriate committee of the senate and house of representatives on budgetary and legislative actions that will improve the state's drought response programs and planning.

NEW SECTION. **Sec.**  A new section is added to chapter 90.86 RCW to read as follows:

Staff support for the joint legislative committee on water supply during drought shall be provided by the house of representatives office of program research and senate committee services.

NEW SECTION. **Sec.**  A new section is added to chapter 90.86 RCW to read as follows:

(1) The members of the joint legislative committee on water supply during drought shall serve without additional compensation, but must be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending meetings of the joint legislative committee on water supply during drought.

(2) The expenses of the joint legislative committee on water supply during drought must be paid jointly by the senate and the house of representatives. Committee expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

NEW SECTION. **Sec.**  A new section is added to chapter 43.21C RCW to read as follows:

Emergency water withdraws and associated physical works, and temporary changes in purpose, place of use, or point of diversion for a water right are exempt from the provisions of this chapter if authorized by the department of ecology under RCW 43.83B.410.

**Sec.**  RCW 90.03.280 and 1994 c 264 s 83 are each amended to read as follows:

((~~Upon receipt of a proper application, the department shall instruct the applicant to publish notice thereof~~)) Except for temporary changes in purpose, place of use, or point of diversion consistent with the finding of a drought condition under RCW 43.83B.410, the department shall, upon receipt of a proper application, instruct the applicant to publish notice of application in a form and within a time prescribed by the department in a newspaper of general circulation published in the county or counties in which the storage, diversion, and use is to be made, and in such other newspapers as the department may direct, once a week for two consecutive weeks. Upon receipt by the department of an application it shall send notice ((~~thereof~~)) of the application containing pertinent information to the director of the department of fish and wildlife.

NEW SECTION. **Sec.**  RCW 90.86.010 (Joint legislative committee on water supply during drought) and 2005 c 60 s 1 are each repealed.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**--- END ---**