

**E2SHB 1836** - S COMM AMD

By Committee on Agriculture, Water & Rural Economic Development

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 43.83B  
4 RCW to read as follows:

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

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

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

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

15 **Sec. 2.** RCW 43.83B.400 and 1989 c 171 s 1 are each amended to  
16 read as follows:

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

26 **Sec. 3.** RCW 43.83B.405 and 1989 c 171 s 2 are each amended to  
27 read as follows:

28 (1)(a) Whenever it appears to the department (~~(of ecology)~~) that  
29 a drought condition either exists or is forecast to occur within the  
30 state or portions (~~(thereof)~~) of the state, the department (~~(of  
31 ecology)~~) is authorized to issue orders, pursuant to rules previously

1 adopted, to implement the powers as set forth in RCW 43.83B.410  
2 through 43.83B.420. (~~The department shall, immediately upon the~~  
3 ~~issuance of an order under this section, cause said order to be~~  
4 ~~published in newspapers of general circulation in the areas of the~~  
5 ~~state to which the order relates.~~)

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

8 (i) Consult with (~~and obtain the views of~~) affected federally  
9 recognized tribes and the federal and state (~~government~~)  
10 governmental entities identified in the drought contingency plan  
11 periodically revised by the department pursuant to RCW  
12 43.83B.410(~~(4), and (b)~~) (2)(c);

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

15 (iii) Obtain the written approval of the governor.

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

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

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

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

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

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

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

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

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

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

16       **(iii)** The proposed withdrawal will not reduce flows or levels  
17 below essential minimums necessary ~~((A))~~ to ~~((assure))~~ ensure the  
18 maintenance of fisheries requirements~~((r))~~ and ~~((B))~~ to protect  
19 federal and state interests including, among others, power  
20 generation, navigation, and existing water rights~~((r~~  
21 ~~b))~~).

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

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

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

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

39       **(iii)** All state departments or other agencies having jurisdiction  
40 over state or other public lands, if ~~((such))~~ access to the lands are

1 necessary to effectuate the withdrawal authorizations issued under  
2 this subsection, (~~shall~~) must provide short-term easements or other  
3 appropriate property interest upon the payment of the fair market  
4 value. This mandate shall not apply to any lands of the state that  
5 are reserved for a special purpose or use that cannot properly be  
6 carried out if the property interest were conveyed(~~(+)~~).

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

9 (a)(i) Approve a temporary change in purpose, place of use, or  
10 point of diversion, consistent with existing state policy allowing  
11 transfer or lease of waters between willing parties, as provided for  
12 in RCW 90.03.380, 90.03.390, and 90.44.100. However, compliance with  
13 any requirements of (~~(+a)~~) notice of newspaper publication of these  
14 sections or (~~(+b)~~) the state environmental policy act, chapter  
15 43.21C RCW, is not required when such changes are necessary to  
16 respond to drought conditions as determined by the department (~~(of~~  
17 ~~ecology)~~).

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

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

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

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

32 **Sec. 5.** RCW 43.83B.415 and 1989 c 171 s 4 are each amended to  
33 read as follows:

34 (1)(a) The department (~~(of ecology)~~) is authorized to make loans,  
35 grants, or combinations of loans and grants, from emergency  
36 agricultural water supply funds when necessary to provide water to  
37 alleviate emergency drought conditions in order to ensure the  
38 survival of irrigated crops and the state's fisheries. (~~For the~~  
39 ~~purposes of this section, "emergency agricultural water supply funds"~~

1 means funds appropriated from the state emergency water projects  
2 revolving account created under RCW 43.83B.360.)

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

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

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

24 (2)(a) Except as provided in (b) of this subsection, (~~after June~~  
25 ~~30, 1989,~~) emergency agricultural water supply funds, including the  
26 repayment of loans and any accrued interest, shall not be used for  
27 any purpose except during drought conditions as determined under RCW  
28 43.83B.400 and 43.83B.405.

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

33 **Sec. 6.** RCW 43.83B.360 and 2009 c 564 s 938 are each amended to  
34 read as follows:

35 The proceeds from the sale of bonds authorized by RCW  
36 43.83B.300(~~(7)~~) and 43.83B.355 through 43.83B.375 shall be deposited  
37 in the state emergency water projects revolving account, hereby  
38 created in the state treasury, and shall be used exclusively for the  
39 purposes specified in RCW 43.83B.300, (~~and~~) 43.83B.355 through

1 43.83B.375, and 43.83B.415 and for the payment of expenses incurred  
2 in the issuance and sale of such bonds. (~~During the 2009-2011 fiscal~~  
3 ~~biennium, the legislature may transfer from the state emergency water~~  
4 ~~projects revolving account to the state general fund such amounts as~~  
5 ~~reflect the excess fund balance of the account.~~)

6 **Sec. 7.** RCW 43.83B.430 and 2011 c 5 s 911 are each amended to  
7 read as follows:

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

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

25 **Sec. 8.** RCW 90.86.020 and 2005 c 60 s 2 are each amended to read  
26 as follows:

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

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

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

35 ~~(2) The speaker of the house of representatives shall appoint~~  
36 ~~four members from the house of representatives to serve on the~~  
37 ~~committee, including the chair of the committee responsible for water~~

1 resource issues. Two members from each major political party must be  
2 appointed.

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

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

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

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

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

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

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

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

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

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

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

35 **Sec. 9.** RCW 90.86.030 and 2010 1st sp.s. c 7 s 122 are each  
36 amended to read as follows:

37 (1) The joint legislative committee on water supply during  
38 drought shall convene from time to time at the call of the chair, or

1 if no chair is currently designated, by a majority of committee  
2 members. The committee may convene under the following circumstances:

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

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

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

13 (2)(a) The committee may:

14 (i) Request and review information relating to water supply  
15 conditions in the state, (~~and~~) economic, environmental, and other  
16 impacts relating to decreased water supply being experienced or  
17 anticipated;

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

21 (iii) Provide recommendations and advice to drought response  
22 entities;

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

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

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

36 (3)(a) During drought conditions in which an order issued under  
37 RCW 43.83B.405 is in effect, the department of ecology shall provide  
38 to the committee no less than monthly a report describing drought  
39 response activities of the department and other state and federal  
40 agencies participating on the water supply availability committee



1 identified in WAC 173-166-030 as it existed on the effective date of  
2 this section.

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

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

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

22 NEW SECTION. Sec. 10. A new section is added to chapter 90.86  
23 RCW to read as follows:

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

27 NEW SECTION. Sec. 11. A new section is added to chapter 90.86  
28 RCW to read as follows:

29 (1) The members of the joint legislative committee on water  
30 supply during drought shall serve without additional compensation,  
31 but must be reimbursed for travel expenses in accordance with RCW  
32 44.04.120 while attending meetings of the joint legislative committee  
33 on water supply during drought.

34 (2) The expenses of the joint legislative committee on water  
35 supply during drought must be paid jointly by the senate and the  
36 house of representatives. Committee expenditures are subject to  
37 approval by the senate facilities and operations committee and the

1 house of representatives executive rules committee, or their  
2 successor committees.

3 NEW SECTION. **Sec. 12.** A new section is added to chapter 43.21C  
4 RCW to read as follows:

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

9 **Sec. 13.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to  
10 read as follows:

11 (~~Upon receipt of a proper application, the department shall~~  
12 ~~instruct the applicant to publish notice thereof~~) Except for  
13 temporary changes in purpose, place of use, or point of diversion  
14 consistent with the finding of a drought condition under RCW  
15 43.83B.410, the department shall, upon receipt of a proper  
16 application, instruct the applicant to publish notice of application  
17 in a form and within a time prescribed by the department in a  
18 newspaper of general circulation published in the county or counties  
19 in which the storage, diversion, and use is to be made, and in such  
20 other newspapers as the department may direct, once a week for two  
21 consecutive weeks. Upon receipt by the department of an application  
22 it shall send notice (~~thereof~~) of the application containing  
23 pertinent information to the director of the department of fish and  
24 wildlife.

25 NEW SECTION. **Sec. 14.** The following acts or parts of acts are  
26 each repealed:

27 (1) RCW 90.86.010 (Joint legislative committee on water supply  
28 during drought) and 2005 c 60 s 1; and

29 (2) RCW 90.86.900 (Effective date—2005 c 60) and 2005 c 60 s 5.

30 NEW SECTION. **Sec. 15.** This act is necessary for the immediate  
31 preservation of the public peace, health, or safety, or support of  
32 the state government and its existing public institutions, and takes  
33 effect immediately."

**E2SHB 1836** - S COMM AMD

By Committee on Agriculture, Water & Rural Economic Development

1        On page 1, line 1 of the title, after "preparedness;" strike the  
2 remainder of the title and insert "amending RCW 43.83B.400,  
3 43.83B.405, 43.83B.410, 43.83B.415, 43.83B.360, 43.83B.430,  
4 90.86.020, 90.86.030, and 90.03.280; adding a new section to chapter  
5 43.83B RCW; adding new sections to chapter 90.86 RCW; adding a new  
6 section to chapter 43.21C RCW; repealing RCW 90.86.010 and 90.86.900;  
7 and declaring an emergency."

EFFECT: Removes requirement to obtain the views of federally recognized tribes while retaining the department of ecology's (DOE) mandatory consultation with the tribes before entering the administrative orders implementing drought powers.

Removes the requirement that DOE include other than anadromous or commercial fish species when it makes the necessary finding under existing law that a proposed emergency withdrawal will not reduce flows below those necessary for maintaining fisheries requirements, before issuing an emergency withdrawal authorization.

Removes flooding and other impacts of increased volatility of the water cycle from the joint legislative committee on water supply during drought's purview.

Editorial, nonsubstantive changes.

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