

HOUSE BILL REPORT

E2SHB 1836

As Passed House:
March 5, 2015

Title: An act relating to state drought preparedness.

Brief Description: Concerning state drought preparedness.

Sponsors: House Committee on General Government & Information Technology (originally sponsored by Representatives Stanford, Blake, Lytton, Walkinshaw, Gregerson and Tarleton).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/11/15, 2/17/15 [DPS];

General Government & Information Technology: 2/23/15, 2/24/15 [DP2S(w/o sub AGNR)].

Floor Activity:

Passed House: 3/5/15, 57-41.

Brief Summary of Engrossed Second Substitute Bill

- Authorizes the Department of Ecology (DOE) to use any funds in the State Drought Preparedness Account to preemptively negotiate 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.
- Directs the DOE to not limit its analysis of whether or not an emergency drought water withdrawal authorization affects fisheries to only anadromous or commercial species.
- Allows the DOE to publish drought orders as it finds appropriate as opposed to publishing the orders in newspapers of general circulation in the areas affected by a drought order.
- Adds affected federally recognized Indian tribes to the list of entities that must be consulted prior to issuing a drought order.
- Makes technical changes to the state's drought preparedness statutes, including the consolidation of existing definitions, structural reorganization, and corrections of potential amendments by reference.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Makes changes to the scope, mechanics, and authority of the Joint Legislative Committee on Water Supply During Drought.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Blake, Chair; Lytton, Vice Chair; Buys, Ranking Minority Member; Dunshee, Kretz, Pettigrew, Stanford and Van De Wege.

Minority Report: Do not pass. Signed by 4 members: Representatives Dent, Assistant Ranking Minority Member; Chandler, Orcutt and Schmick.

Staff: Jason Callahan (786-7117).

HOUSE COMMITTEE ON GENERAL GOVERNMENT & INFORMATION TECHNOLOGY

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Natural Resources. Signed by 6 members: Representatives Hudgins, Chair; Senn, Vice Chair; MacEwen, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Morris and Takko.

Minority Report: Do not pass. Signed by 1 member: Representative McCabe.

Staff: Dan Jones (786-7118).

Background:

The Department of Ecology's Role Regarding Drought.

The Department of Ecology (DOE) is authorized to declare drought emergencies by administrative order. Before it can declare a drought emergency, the DOE must determine an area is experiencing or expected to experience less than 75 percent of normal water supply and is expected to suffer undue hardships as a result of the dry conditions. Normal water supply is calculated as the average amount of water available on an annual basis based in precipitation, streamflow, snowpack, and other factors. Prior to issuing an order, the DOE must first consult with federal and state agencies and receive the approval of the Governor.

The DOE may, upon the issuance of an order, take certain actions. These include the authorization of emergency withdrawals of public surface and ground waters as long as the withdrawals are put to beneficial uses and will not reduce flows below the essential minimum for fisheries and other state and federal interests. The issuance of a drought order also allows the DOE to approve temporary changes in the use of a water right, employ additional people, acquire emergency equipment, and revise any drought contingency plans. Any temporary changes in the use of a water right authorized under a drought order is exempt from review

under the State Environmental Policy Act (SEPA) and from any requirements for newspaper notification.

The drought order also allows the DOE to make loans or grants from emergency water supply funds when necessary to help alleviate drought conditions. These expenditures are made from the bond-supported State Emergency Water Projects Revolving Account. In addition to that account, the DOE manages the appropriation-supported State Drought Preparedness Account (Preparedness Account). Funds in the Preparedness Account may be used by the DOE only for drought preparedness.

Joint Legislative Committee on Water Supply During Drought.

The Joint Legislative Committee on Water Supply During Drought (Drought Committee) is a committee composed entirely of legislators that is authorized to meet when a drought order is in effect. The Committee includes eight legislative members. The Committee must include the chairs of the water resources committees of each legislative chamber.

When activated, the Drought Committee may request and review information relating to the state's water supply conditions and to the actual or anticipated economic, environmental, and other impacts of decreased water supply. The Drought Committee is empowered to make recommendations to the Legislature on budgetary and legislative actions to improve the state's drought response programs and planning.

When a drought conditions order is in effect, the DOE must provide the Drought Committee with at least monthly reports describing drought response activities of the DOE and other state and federal agencies. The report must include information regarding applications for, and approvals and denials of, emergency water withdrawals and temporary changes or transfers of water rights.

Summary of Engrossed Second Substitute Bill:

The Department of Ecology's Role Regarding Drought.

The DOE is authorized to use any funds in the Preparedness Account to preemptively negotiate 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. This includes effects on drinking water supplies, agricultural activities, and fish or wildlife survival. The DOE is directed to not limit its analysis to only anadromous or commercial species when making a determination of whether or not an emergency drought water withdrawal authorization affects fisheries.

The requirement on the DOE to publish drought orders in newspapers of general circulation in the areas affected by a drought order is changed to allow the DOE to publish as the DOE finds appropriate. Prior to issuing the drought order, the DOE must consult with any affected federally-recognized Indian tribes.

Joint Legislative Committee on Water Supply During Drought.

The operations of the Drought Committee are changed. The Drought Committee may convene at times other than just during a drought conditions order. The Drought Committee may also convene if the Chair of the Drought Committee (Chair) determines that it is likely a drought conditions order will be issued in the next year or if the Chair determines that state drought preparedness planning would benefit from the meetings of the Drought Committee. State preparedness planning may include building legislative institutional knowledge.

The mechanics of the Drought Committee are also changed. The chairs of the legislative committees overseeing water policy are no longer required to serve on the Drought Committee, but they must be given the option to serve. Conditions for the severance of service for members of the Drought Committee are provided. These include having a successor being appointed to the Drought Committee or the cessation of service from the body being represented by the member. A majority of the Drought Committee is authorized to call a meeting if no Chair is currently designated. Details are provided relating to the staffing of the Drought Committee and how expenses are to be accounted.

In addition to receiving and reviewing information related to water supply conditions after a drought is declared, the Drought Committee may also review similar information prior to a drought being declared. The Drought Committee may also provide non-binding advice to drought response entities, provide policy oversight and assistance in developing drought-related budget requests, and coordinate with drought response entities to consider lessons learned in drought and near-drought years and to improve efforts to preemptively mitigate the impacts of a drought. Finally, the Drought Committee may also request and review information related to flooding and other impacts of increased volatility in the water cycle.

The DOE must annually provide the Drought Committee with an assessment of predicted water supply for the coming year regardless of whether or not the Drought Committee is activated.

Technical Changes.

Among the technical changes is the consolidation of existing definitions relating to drought, the elimination of language describing expired one-time events, and restructuring existing language into subsections. Two existing potential amendments by reference are addressed. These involve the existing exemptions for emergency water withdrawal orders from both the SEPA and from requirements on the DOE to publish water right change applications in newspapers of general circulation.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony (Agriculture & Natural Resources):

(In support) The intent of the bill is to clear up some statutory language in order to have clear procedures for drought response and to allow the DOE to be proactive before making a drought declaration and more effective and efficient after a drought is declared. Pre-negotiating access to water ahead of a drought will allow the DOE to buy access at market rates and not at the elevated rates that can be found during a drought. Discretion in newspaper publications allows the DOE to put more money to use on the ground during a drought to help relieve limited water conditions. Providing more opportunities to build legislative institutional knowledge around drought issues is good since droughts can be so infrequent.

(Opposed) None.

Staff Summary of Public Testimony (General Government & Information Technology):

(In support) None.

(Opposed) None.

Persons Testifying (Agriculture & Natural Resources): Representative Stanford, prime sponsor; and Jennifer Holderman, Department of Ecology.

Persons Testifying (General Government & Information Technology): None.

Persons Signed In To Testify But Not Testifying (Agriculture & Natural Resources): None.

Persons Signed In To Testify But Not Testifying (General Government & Information Technology): None.