

HOUSE BILL REPORT

HB 2863

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to the administrative rules governing the provision of emergency drought relief funds for drinking water supply projects.

Brief Description: Concerning the administrative rules governing the provision of emergency drought relief funds for drinking water supply projects.

Sponsors: Representatives McCabe, Blake, Chandler, Dent and Johnson.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/2/16, 2/4/16 [DP].

Brief Summary of Bill

- Provides the Department of Ecology with specific factors to consider, and make provisions for, when adopting either emergency or permanent rules relating to drinking water supply projects funded from the State Drought Preparedness Account.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass. Signed by 11 members: Representatives Blake, Chair; Buys, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Chandler, Hurst, Kretz, Lytton, Orcutt, Pettigrew, Schmick and Van De Wege.

Minority Report: Do not pass. Signed by 2 members: Representatives Walkinshaw, Vice Chair; Stanford.

Staff: Jason Callahan (786-7117).

Background:

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

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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 on 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 use 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.

The drought order 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.

In response to the 2015 drought, the 2015 Legislature approved \$16 million in drought relief funding for use in 2015 and 2016. As of the end of 2015, the DOE had spent or committed \$6.7 million of that appropriation.

The DOE adopted emergency rules outlining how the funds could be spent. These rules authorize funding to public bodies for projects designed to alleviate hardships arising from drought conditions which may affect public health and safety or cause significant economic or environmental impacts. Authorized project types include municipal drinking water supply projects, agricultural activity projects, and projects that maintain instream flows to protect fish and wildlife habitat. The types of public entities authorized to receive drought funding include any federal agency, state agency, local agency, political subdivision, taxing district, or municipal corporation, and federally recognized Indian tribes.

The emergency rules require projects to meet specified criteria in order to qualify for funding. This includes an analysis of:

- whether or not the drought is presently causing, or is likely to cause, undue hardship for the applicant;
- if the proposed project is for the purpose of supplying water to a previously established activity that is authorized under an existing water right;
- if the proposed project is able to timely assist in alleviating the current water shortage caused by drought conditions;
- whether or not the applicant has obtained all required permits and approvals for the proposed project; and
- if the sponsor has demonstrated to the DOE that the proposed project can be completed during the current drought declaration.

The emergency rules give funding priority to proposed projects which incorporate elements that most effectively conserve water, represent the more efficient use of available water

supplies, and that will address shortages that pose the greatest hardship arising from drought conditions. Priority is also given to applicants who demonstrate the clearest need for alternate emergency water supplies to avoid undue hardship, but only if the proposed project will address the need before the current drought declaration expires. That need is measured by:

- the short- and long-term effects the water shortage would have on agricultural crops, livestock operations, or a municipality or utility's ability to provide drinking water in its service area;
- the capability and reliability of the proposed project to provide an emergency water supply to the applicant; and
- the percentage of water shortage experienced or forecasted for the applicant.

Summary of Bill:

The DOE is provided with specific factors to consider and make provisions for when adopting either emergency or permanent rules relating to drinking water supply projects funded from the Preparedness Account. The first factor that the DOE must consider is the time required for a project sponsor to complete a drinking water project. This consideration must include a recognition of the level of complexity of drinking water projects that can affect the time it takes to complete a project, including the time it takes to satisfy the permit requirements of the DOE and the Department of Health.

The second factor the DOE must consider is the benefits of the project from the time the project is completed beyond the time that the current drought declaration ends. This includes a consideration of the time it will take for the project sponsor's water supply to return to normal, even if that time is beyond the end of the drought declaration.

The third factor the DOE must consider is project benefits that provide both short-term relief from the current drought and long-term solutions to drinking water issues. These long-term solutions include ways to preempt and manage undue hardships related to future or persistent low water supply events.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) It is not just agriculture and fish that suffer during a drought. Local communities can also struggle to provide drinking water to their citizens. Unlike other water uses, the

provision of drinking water requires complex permitting from at least two state agencies, and that permitting can take a long time.

Water shortages will only be magnified as the planet warms. Cities must be better prepared to deal with drought and the state should recognize that the effects of drought can continue long past the end of the drought declaration. It can take months for the water supply to return to normal. Long- and short-term considerations should be part of the drought response formula.

The DOE tries to capture legislative intent when deciding how to spend drought funds, and any additional intent is welcome. The DOE looks towards statutes and the Joint Legislative Committee on Water Supply During Drought when attempting to divine intent. As it is, the DOE can address the concerns in the bill administratively if the Legislature prefers that route.

(Opposed) None.

(Other) The language in the bill would allow emergency drought funds to be used after a drought is over. It is better to preemptively plan a project before a drought occurs than try to address it after the fact. Some projects that are not directly related to drought would be allowed to be funded.

Persons Testifying: (In support) Representative McCabe, prime sponsor; David Poucher, City of White Salmon; and Tom Loranger, Department of Ecology.

(Other) Bruce Wishart, Center for Environmental Law & Policy and Sierra Club.

Persons Signed In To Testify But Not Testifying: None.