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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)

READ FIRST TIME 02/27/15.

1 AN ACT Relating to state drought preparedness; amending RCW  
2 43.83B.400, 43.83B.405, 43.83B.410, 43.83B.415, 43.83B.360,  
3 43.83B.430, 90.86.020, 90.86.030, and 90.03.280; adding a new section  
4 to chapter 43.83B RCW; adding new sections to chapter 90.86 RCW;  
5 adding a new section to chapter 43.21C RCW; repealing RCW 90.86.010;  
6 and declaring an emergency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35       (2)(a) Any order issued under subsection (1) of this section  
36 (~~(shall)~~) must contain a termination date for the order. The  
37 termination date (~~(shall be)~~) may not be later than one calendar year  
38 from the date the order is issued. Although the department may, with  
39 the written approval of the governor, change the termination date by

1 amending the order, no such amendment or series of amendments may  
2 have the effect of extending its termination to a date which is later  
3 than two calendar years after the issuance of the order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28       (a)(i) Approve a temporary change in purpose, place of use, or  
29 point of diversion, consistent with existing state policy allowing  
30 transfer or lease of waters between willing parties, as provided for  
31 in RCW 90.03.380, 90.03.390, and 90.44.100. However, compliance with  
32 any requirements of ~~((a))~~ notice of newspaper publication of these  
33 sections or ~~((b))~~ the state environmental policy act, chapter  
34 43.21C RCW, is not required when such changes are necessary to  
35 respond to drought conditions as determined by the department ~~((of~~  
36 ~~ecology))~~.

37       (ii) An approval of a temporary change of a water right as  
38 authorized under this subsection is not admissible as evidence in  
39 either supporting or contesting the validity of water claims in *State*  
40 *of Washington, Department of Ecology v. Acquavella*, Yakima county

1 superior court number 77-2-01484-5 or any similar proceeding where  
2 the existence of a water right is at issue.

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

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

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

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

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

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

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

35 ~~((These funds shall))~~ (d) Emergency agricultural water supply  
36 funds available for drought relief may not be used for  
37 nonagricultural drought relief purposes unless there are no other  
38 capital budget funds available for these purposes. In any biennium  
39 the total expenditures of emergency agricultural water supply funds

1 for nonagricultural drought relief purposes may not exceed ten  
2 percent of the total of such funds available during that biennium.

3 (2)(a) Except as provided in (b) of this subsection, (~~after June~~  
4 ~~30, 1989,~~) emergency agricultural water supply funds, including the  
5 repayment of loans and any accrued interest, shall not be used for  
6 any purpose except during drought conditions as determined under RCW  
7 43.83B.400 and 43.83B.405.

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

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

14 The proceeds from the sale of bonds authorized by RCW  
15 43.83B.300(~~(7)~~) and 43.83B.355 through 43.83B.375 shall be deposited  
16 in the state emergency water projects revolving account, hereby  
17 created in the state treasury, and shall be used exclusively for the  
18 purposes specified in RCW 43.83B.300, (~~and~~) 43.83B.355 through  
19 43.83B.375, and 43.83B.415 and for the payment of expenses incurred  
20 in the issuance and sale of such bonds. (~~During the 2009-2011 fiscal~~  
21 ~~biennium, the legislature may transfer from the state emergency water~~  
22 ~~projects revolving account to the state general fund such amounts as~~  
23 ~~reflect the excess fund balance of the account.~~)

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

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

36 (2) As part of drought preparedness, moneys in the account may be  
37 used for the negotiation of agreements or contracts before a drought  
38 is declared that identifies projects, measures, sources of water, and

1 other resources that can be accessed during a drought to alleviate  
2 drought conditions that may affect public health and safety, drinking  
3 water supplies, agricultural activities, or fish and wildlife  
4 survival.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (2)(a) The committee may:

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

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

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



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

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 90.86  
2    RCW to read as follows:

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

6        NEW SECTION.    **Sec. 11.**    A new section is added to chapter 90.86  
7    RCW to read as follows:

8        (1) The members of the joint legislative committee on water  
9    supply during drought shall serve without additional compensation,  
10   but must be reimbursed for travel expenses in accordance with RCW  
11   44.04.120 while attending meetings of the joint legislative committee  
12   on water supply during drought.

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

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

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

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

27       (~~Upon receipt of a proper application, the department shall~~  
28   ~~instruct the applicant to publish notice thereof~~) Except for  
29   temporary changes in purpose, place of use, or point of diversion  
30   consistent with the finding of a drought condition under RCW  
31   43.83B.410, the department shall, upon receipt of a proper  
32   application, instruct the applicant to publish notice of application  
33   in a form and within a time prescribed by the department in a  
34   newspaper of general circulation published in the county or counties  
35   in which the storage, diversion, and use is to be made, and in such  
36   other newspapers as the department may direct, once a week for two  
37   consecutive weeks. Upon receipt by the department of an application

1 it shall send notice (~~thereof~~) of the application containing  
2 pertinent information to the director of the department of fish and  
3 wildlife.

4 NEW SECTION. **Sec. 14.** RCW 90.86.010 (Joint legislative  
5 committee on water supply during drought) and 2005 c 60 s 1 are each  
6 repealed.

7 NEW SECTION. **Sec. 15.** This act is necessary for the immediate  
8 preservation of the public peace, health, or safety, or support of  
9 the state government and its existing public institutions, and takes  
10 effect immediately.

--- END ---