

HOUSE BILL REPORT

ESHB 1622

As Passed Legislature

Title: An act relating to drought preparedness and response.

Brief Description: Concerning drought preparedness and response.

Sponsors: House Committee on Rural Development, Agriculture, & Natural Resources (originally sponsored by Representatives Blake, Kretz, Springer, Chandler, Chapman, Dent and Shewmake; by request of Department of Ecology).

Brief History:

Committee Activity:

Rural Development, Agriculture, & Natural Resources: 2/8/19, 2/20/19 [DPS];
Capital Budget: 2/25/19, 2/26/19 [DPS(RDAN)].

Floor Activity:

Passed House: 3/12/19, 80-16.
Passed House: 1/29/20, 79-17.
Senate Amended.
Passed Senate: 3/5/20, 48-0.
House Concurred.
Passed House: 3/7/20, 87-10.
Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Authorizes the Department of Ecology (Ecology) to issue a drought advisory when it appears that drought conditions may develop.
- Makes multiple changes to Ecology's responsibilities when an emergency drought order has been issued.
- Authorizes Ecology to develop and update a drought contingency plan in collaboration with other affected governments.
- Directs Ecology to initiate a pilot program to explore the cost, feasibility, and benefits of entering into long-term water right lease agreements to alleviate water supply conditions that may occur as a result of drought conditions.

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.

HOUSE COMMITTEE ON RURAL DEVELOPMENT, AGRICULTURE, & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Blake, Chair; Shewmake, Vice Chair; Chandler, Ranking Minority Member; Chapman, Fitzgibbon, Kretz, Lekanoff, Pettigrew, Ramos and Springer.

Minority Report: Do not pass. Signed by 5 members: Representatives Dent, Assistant Ranking Minority Member; Dye, Orcutt, Schmick and Walsh.

Staff: Robert Hatfield (786-7117).

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill by Committee on Rural Development, Agriculture, & Natural Resources be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Tharinger, Chair; Doglio, Vice Chair; Peterson, Vice Chair; Davis, Leavitt, Lekanoff, Morgan, Riccelli, Santos, Sells and Stonier.

Minority Report: Do not pass. Signed by 9 members: Representatives Steele, Assistant Ranking Minority Member; Corry, Dye, Eslick, Gildon, Irwin, Jenkin, Maycumber and Walsh.

Minority Report: Without recommendation. Signed by 2 members: Representatives DeBolt, Ranking Minority Member; Smith, Assistant Ranking Minority Member.

Staff: Melissa Palmer (786-7388).

Background:

The Department of Ecology's Role Regarding Drought.

The Department of Ecology (Ecology) is authorized to declare drought emergencies by administrative order. Before it may declare a drought emergency, Ecology must determine that an area is experiencing or is 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, Ecology must first consult with federal and state agencies and must receive the approval of the Governor.

The Department of Ecology may, upon the issuance of a drought emergency order, take certain actions. This includes 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 Ecology to approve temporary changes in the use of a water right, to employ additional people, to acquire emergency equipment, and to revise any

drought contingency plans. Any temporary changes in the use of a water right authorized under a drought order are exempt from review under the State Environmental Policy Act and from any requirements for newspaper notification.

The drought order also allows Ecology 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, Ecology manages the appropriation-supported State Drought Preparedness Account (Preparedness Account). Funds in the Preparedness Account may be used by Ecology only for drought preparedness.

Summary of Engrossed Substitute Bill:

The Department of Ecology (Ecology) is authorized to issue a drought advisory when it appears that drought conditions may develop, based on statutory definitions of normal water supply and drought condition. The drought advisory should seek to increase the awareness and readiness of affected water users. The drought advisory may recommend voluntary actions to alleviate the impacts of drought.

The following terms are defined:

- "Drought condition" means that the water supply for a geographic area, or for a significant portion of a geographic area, is below 75 percent of normal and the water shortage is likely to create undue hardships for water users or the environment.
- "Normal" water supply, for the purpose of determining drought conditions, means the median amount of water available to a geographical area, relative to the most recent 30-year base period used to define climate normals.

Ecology's obligations with regard to the issuance of a drought emergency order are changed in the following ways:

- The requirement that Ecology publish drought emergency orders in a newspaper of general circulation is changed to a requirement that Ecology notify the public of the order in a manner consistent with rules adopted by Ecology.
- Ecology is required to consult with affected federally recognized tribes prior to the issuance of a drought emergency order.
- Ecology is required to consider input from local water users, including nursery and landscape professionals, in the determination of whether a drought condition has created an undue hardship for water users or the environment.
- A person may petition Ecology to declare a drought emergency. Any order of drought emergency issued after Ecology's receipt of a petition must be based on the statutory definitions of drought condition and normal water supply. Ecology may not rely exclusively on information presented in a petition when determining whether to issue an order of drought emergency.

Ecology's obligations and authorizations once a drought emergency order has been issued are changed in the following ways:

- The list of stakeholders that Ecology must consult before issuing an emergency water withdrawal authorization is expanded to include affected federally recognized tribes.

- In prioritizing the approval of emergency water withdrawal authorizations, Ecology must address those most affected by the water deficit to ensure the survival of irrigated crops, the state's fisheries, and the provision of water for small communities.
- The list of temporary changes to a water right that Ecology may authorize is expanded to include a change in the point of withdrawal.
- Ecology is authorized to enter into agreements with applicants receiving emergency water withdrawals to recover all or a portion of the costs of certain forms of mitigation for emergency withdrawal authorizations.
- Ecology is authorized to enter into interagency agreements with other state and federal entities to partner in emergency drought response.

Ecology's authority to issue grants to eligible public entities in order to alleviate emergency drought conditions is changed in the following ways:

- Ecology's authority to issue loans and grants in order to alleviate emergency drought conditions is modified to remove the authority to issue loans.
- No single entity may receive more than 25 percent of the total funds available.
- Projects must show substantial benefit from securing water supply, availability, or reliability relative to project costs.
- Except for projects for public water systems serving economically disadvantaged communities, Ecology may fund only up to 50 percent of the cost of a project.
- The scope of public entities eligible to receive grants is defined to include, among others, counties, cities, towns, irrigation districts, public utility districts, federally recognized Indian tribes, and watershed management partnerships.
- The scope of projects for which grants may be used is defined to include, among others, creation of additional water storage, development of emergency water supplies, and projects designed to mitigate for the impacts of water supply shortages on fish and wildlife.

The State Drought Preparedness Account is renamed the State Drought Preparedness and Response Account (Account). Expenditures from the Account may be used for drought preparedness and response activities.

Ecology is authorized to develop and update the drought contingency plan in collaboration with affected governments. Ecology must provide notice of any updates to the drought contingency plan.

Ecology is directed to initiate a pilot program to explore the cost, feasibility, and benefits of entering into long-term water right lease agreements. The purpose of the agreements is to alleviate water supply conditions that may affect public health and safety, drinking water supplies, agricultural activities, or fish and wildlife survival. Ecology must submit a report to the Legislature on the results of the pilot program by December 31, 2024.

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 (Rural Development, Agriculture, & Natural Resources):

(In support) This bill supports utilities in addressing drought risk. A utility without water poses a significant public health risk. Utilities are currently limited in their drought response authority. This bill would avoid the need to rely on triage in order to respond to drought-related impacts. Allowing a staged drought response helps improve public awareness and readiness. Right now, the only water users who qualify for emergency water are those who actually run out of water; there are still others who need financial assistance even if they do not run entirely out of water.

This bill helps to improve responsiveness to drought emergencies. A drought advisory stage would increase readiness for droughts. This bill also sets up a framework for drought. It is critical to take steps to be prepared for future water shortages.

The impact of drought is consequential. It is likely that there will be more droughts in the future. This bill would set up long-term preparedness and resiliency. The year 2015 was one of the worst years for drought in the state, and the response to that drought showed that the drought response framework was outdated and limited the ability to respond to the drought. After the 2015 drought, a drought stakeholder group was convened to identify best practices. The stakeholder group made two suggestions: streamlining the approach to drought emergencies, and improving readiness and communication by issuing a drought advisory in advance. This bill authorizes preparedness projects, such as back-up water supply, which will help users be prepared for drought before a drought actually occurs. Snowpack is low this winter, which raises possible drought concerns for the summer. This bill represents an important step toward achieving the goal of drought preparedness.

(Opposed) None.

(Other) The Department of Ecology (Ecology) has shown good foresight in preparing for drought. This bill features investments that allow the state to better weather drought conditions, which is good. Every watershed in the state experiences drought differently. One irrigation district has no water storage, so in a drought, that district's water rights depend on the run of the river; that district would be benefited by additional storage. Another irrigation district is in a watershed with plenty of storage, but the water in that watershed is fully appropriated, and so the ability of Ecology to do emergency withdrawals in that watershed is very limited, and drought wells are the only option. This bill does not make any changes to water law or the prior appropriations doctrine; emergency withdrawals are conditioned to protect senior water rights. The provisions in this bill would build in more resilience to the system.

The work of Ecology to reach out to stakeholders has been very helpful. It is a good goal to be more proactive in the approach to drought response. It is important to define what a "normal" amount of water is. It would be good to add water purveyors to the list of stakeholders consulted under the bill. The prioritization in the bill of who would be eligible for emergency water withdrawals would represent a change in decades-old policy to balance domestic use and irrigation use. This bill also has no definition of how Ecology would approach cost recovery for drought response agreements, and it would be good to have some

legislative guidance on that issue. There should also be an assessment of the costs and benefits associated with the agreements that Ecology would be authorized to enter into under the bill.

Staff Summary of Public Testimony (Capital Budget):

(In support) Although droughts are a natural feature, droughts in our state are consequential. Most of this legislation would not drive costs. The bill does include a pilot project for long-term leases related to water. The Department of Ecology (Ecology) anticipates establishing one to three long-term leases related to water during the 2021–23 biennium; however, the cost for the long-term leases would be minimal. The rest of the costs are related to updating the rules, and these costs would be absorbed by the agency. The Department of Ecology expects to see more frequent droughts. Currently, Ecology can enter into agreements to fallow fields only once a drought is declared. The Department of Ecology would like to establish long-term leases prior to a drought declaration. If a drought is declared in a location where a long-term agreement exists, the remaining amount for the water would then be paid. The entire amount expended for the 2015 drought was \$6.7 million; however, the vast majority of the funds went to infrastructure projects and a smaller amount to leases. The biggest challenge during the 2015 drought was a result of the drought being declared late in the season. At that point, it was too late for Ecology to enter into water right leases with landowners. The pilot would allow Ecology to pay a certain amount as a retainer. The Department of Ecology would focus the pilot on drought-prone areas and work with landowners to determine the appropriate length of the agreement.

(Opposed) None.

Persons Testifying (Rural Development, Agriculture, & Natural Resources): (In support) Representative Blake, prime sponsor; Mike Means, Washington State Department of Health; Kiza Gates, Washington State Department of Fish and Wildlife; and Carrie Sessions, Washington State Department of Ecology.

(Other) Mike Schwisow, Washington State Water Resources Association; and Tom Davis, Washington Farm Bureau.

Persons Testifying (Capital Budget): Carrie Sessions, Department of Ecology.

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

Persons Signed In To Testify But Not Testifying (Capital Budget): None.