

SENATE BILL REPORT

ESHB 1622

As of February 28, 2020

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: Passed House: 3/12/19, 80-16; 1/29/20, 79-17.

Committee Activity: Agriculture, Water, Natural Resources & Parks: 3/26/19, 4/02/19 [DPA-WM]; 2/20/20 [DPA-WM, w/oRec].

Ways & Means: 4/08/19, 4/09/19 [DPA, w/oRec]; 2/28/20.

Brief Summary of Amended Bill

- Authorizes the Department of Ecology (Ecology) to issue a drought advisory when it appears that drought conditions may develop.
- Makes various changes to Ecology's responsibilities when an emergency drought order has been issued.
- 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 which may occur as a result of drought conditions.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Warnick, Ranking Member; McCoy and Rolfes.

Minority Report: That it be referred without recommendation.

Signed by Senators Honeyford and Short.

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.

Staff: Karen Epps (786-7424)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Rivers, Schoesler, Wagoner and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senator Van De Wege.

Staff: Jed Herman (786-7346)

Background: Ecology is authorized to declare drought emergencies by administrative order. Before it may declare a drought emergency, Ecology must determine 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. Prior to issuing an order, Ecology must first consult with federal and state agencies and must receive approval from the Governor.

Ecology may, upon issuing a drought emergency order, authorize 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. Issuing a drought order also allows Ecology 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 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.

The Joint Legislative Committee on Water Supply During Drought (Drought Committee) is comprised of eight legislative members and must include the chairs of the water resources committees of each legislative chamber. When a drought conditions order is in effect, Ecology must provide the Drought Committee with at least monthly reports describing drought response activities of Ecology and other state and federal agencies. The Drought Committee is authorized to make recommendations to the Legislature on budgetary and legislative actions to improve the state's drought response programs and planning.

Summary of Amended Bill: 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.

Ecology is required to consult with affected federally recognized tribes prior to issuing a drought emergency order. When issuing a drought emergency order, Ecology must consider input from local water users when determining 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. Ecology must base the decision to issue a drought emergency order in response to a petition on the definitions of drought condition and normal water supply and follow established procedures when issuing a drought emergency order. Ecology must not rely exclusively on petitioner's information when making a determination to issue a drought emergency order. The requirement that Ecology publish drought emergency orders in a newspaper of general circulation is changed to require Ecology to notify the public of the order in a manner consistent with rules adopted by Ecology. Ecology must provide notice of any updates when revising the drought contingency plan.

In prioritizing the approval of emergency 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 stakeholders that Ecology must consult before issuing an emergency withdrawal authorization is expanded to include affected federally recognized tribes and local water users, including nursery and landscape professionals. 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 withdrawals to recover all or a portion of the costs of certain forms of mitigation for emergency withdrawal authorizations. Ecology may 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 to alleviate emergency drought conditions is changed in the following ways:

- 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; and
- the scope of projects for which grants may be used includes, among others, creation of additional water storage, development of emergency water supplies, and projects designed to mitigate the impacts of water supply shortages on fish and wildlife.

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

Ecology must 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.

EFFECT OF AGRICULTURE, WATER, NATURAL RESOURCES & PARKS COMMITTEE AMENDMENT(S):

- Requires Ecology to base the decision to issue a drought emergency order in response to a petition on the definitions of drought condition and normal water supply and to follow established procedures when issuing a drought emergency order.
- Provides that Ecology must not rely exclusively on petitioner's information when making a determination to issue a drought emergency order.
- Adds a requirement that Ecology consider input from nursery and landscape professionals when Ecology considers input from local water users.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Agriculture, Water, Natural Resources & Parks) (Regular Session 2019): *The committee recommended a different version of the bill than what was heard.* PRO: This bill provides more flexibility for Ecology to work with irrigation districts, tribes, environmental groups, and local governments. This bill provides a proactive pathway that avoids the public health risk posed by requiring public water systems to demonstrate they are completely out of water before they can receive financial assistance. The bill streamlines responses to drought emergencies by providing flexibility in the types of projects that can be funded during a drought and improves readiness in communication by authorizing a drought advisory warning ahead of an emergency. This bill sets up a framework to strengthen long term resiliency and preparedness of water users for a drought by authorizing the funding of preparedness projects ahead of a drought emergency. This bill includes a requirement to prioritize the approval of emergency withdraw authorizations to address those most affected by water deficit including ensuring survival of irrigated crops, the state's fisheries, and water for small communities. This bill is helpful in streamlining Ecology's response to drought emergencies which would help ensure that funding is available for all types of projects, including for small towns that are susceptible to water supply shortages.

OTHER: The Yakama Nation would like language added so that tribes are specifically included when the drought contingency plan is updated and that agreements concerning the Yakima Basin Water Transfer Working Group are not changed under the pilot program in the bill.

Persons Testifying (Agriculture, Water, Natural Resources & Parks): PRO: Urban Eberhardt, Kittitas Reclamation District; Carl Schroeder, Association of Washington Cities;

Sheryl Howe, Washington Department of Health; Carrie Sessions, Department of Ecology; Tom Davis, Washington Farm Bureau; Paul Jewell, Washington State Association of Counties.

OTHER: Dawn Vyvyan, Yakama Nation.

Persons Signed In To Testify But Not Testifying (Agriculture, Water, Natural Resources & Parks): No one.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Agriculture, Water, Natural Resources & Parks) (Regular Session 2020): *The committee recommended a different version of the bill than what was heard.* PRO: This bill moves to a more proactive approach to respond to forecasted drought conditions and avoid emergency water access conditions. This bill gives Ecology and local governments additional options and tools to address and to better prepare communities for drought. The bill will save money for all parties, including the state, by not waiting until the emergency is upon us before taking action. This bill will enhance the ability of Ecology and its partners to mitigate for the impacts of water unavailability brought about by drought. The addition of a drought advisory will give districts an impactful head start in response efforts. A program that funds drought conservation work in non-drought years will create resiliency in drought-prone areas of the state and lessen the impact of drought on the state's economy and should reduce the extent and cost of drought response needed over time. The bill streamlines Ecology's response to drought emergencies, provides flexibility in the types of projects Ecology can fund, and improves Ecology's readiness in communication by authorizing drought advisories. The bill also sets up a framework to strengthen resiliency and preparedness of water users in response to drought by allowing Ecology to fund preparedness projects. The bill's creation of a drought advisory stage will help increase awareness and readiness for affected water users, water managers, and other stakeholders. The bill also sets up a framework to strengthen the long-term resiliency and preparedness of water users for drought. This bill will improve the overall response of water utilities in responding to drought risk. The structure established in this bill will help utilities to build on established practices of risk-mitigation and prevention, provide access to resources, develop a safety net, and improve communication.

OTHER: About a decade ago, a drought declaration was issued and the accompanying press release said not to buy plants for Mother's Day because there will not be water to water the plants. Nurseries and landscape professionals would like to be part of the solution, to design low-water use landscapes and recommend drought tolerant plants.

Persons Testifying (Agriculture, Water, Natural Resources & Parks): PRO: Martin Gibbins, League of Women Voters; Paul Jewell, Washington State Association of Counties; Tom Davis, Washington Farm Bureau; Mike Means, Washington State Department of Health; Carrie Sessions, Department of Ecology; Megan Kernan, Department of Fish and Wildlife; Jon Culp, Washington State Conservation Commission.

OTHER: Heather Hansen, Washington State Nursery & Landscape Association.

Persons Signed In To Testify But Not Testifying (Agriculture, Water, Natural Resources & Parks): No one.

Staff Summary of Public Testimony on Bill as Amended by Agriculture, Water, Natural Resources & Parks (Ways & Means) (Regular Session 2019): *The committee recommended a different version of the bill than what was heard.* PRO: The bill sets up a framework for bringing resiliency to meet drought problems. The fiscal costs are indeterminate as we do not yet know the cost of leasing water rights.

Persons Testifying (Ways & Means): PRO: Carrie Sessions, Department of Ecology.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

Staff Summary of Public Testimony on Bill as Amended by Agriculture, Water, Natural Resources & Parks (Ways & Means): PRO: This is agency request legislation. The bill has indeterminate costs for the portion of the bill that calls for a pilot program, with a report due in 2024.

Persons Testifying (Ways & Means): PRO: Carrie Sessions, Department of Ecology.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.