

HOUSE BILL REPORT

HB 2200

As Reported By House Committee On:

Agriculture & Ecology
Appropriations

Title: An act relating to water resource management.

Brief Description: Authorizing local watershed planning and modifying water resource management.

Sponsors: Representatives Chandler, Mastin, Lisk, Mulliken, Honeyford, Robertson, Basich, Horn and Goldsmith.

Brief History:

Committee Activity:

Agriculture & Ecology: 1/9/96, 1/10/96, 1/11/96, 1/15/96 [DPS];
Appropriations: 1/30/96, 1/31/96 [DP2S(w/o sub AG)].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Chandler, Chairman; Koster, Vice Chairman; Chappell, Ranking Minority Member; Linville, Assistant Ranking Minority Member; Boldt; Clements; Delvin; Honeyford; Johnson; Mastin; Robertson and Schoesler.

Minority Report: Do not pass. Signed by 5 members: Representatives R. Fisher; Murray; Ogden; Regala and Rust.

Staff: Kenneth Hirst (786-7105).

Background: Water Resource Management - General. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water are established under a permit system. However, certain uses of groundwater not exceeding 5,000 gallons per day are exempted from this permit requirement. The permit system is based on the prior appropriation doctrine that "first in time is first in right." Other laws authorize the state to establish minimum flows and levels for streams and lakes. The permit system and the state's laws for managing water resources are administered by the Department of Ecology (DOE).

Water Resources Inventory Area (WRIA) Planning. The Water Resources Act directs the DOE to develop a comprehensive state water resources program for making decisions on future water resource allocation and use. The act permits the department to develop the program in segments. Under the act, the DOE has divided the state into 62 WRIsAs.

Groundwater Planning. The groundwater code permits the DOE to designate and manage groundwater areas, sub-areas, or depth zones to prevent the overdraft of groundwaters. In 1985, legislation was enacted that permits groundwater management studies to be initiated locally and allows local governments to assume the lead agency role in developing local groundwater management programs.

Interties. Public water system interties were expressly acknowledged by statute in 1991, and new interties were authorized under certain circumstances. By definition, interties do not include the development of new sources of supply to meet future demand.

Summary of Substitute Bill: WRIA Planning. In general, the county with the greatest population residing within a WRIA is the lead agency for local water resource planning in the WRIA. Such planning is not required; the lead county may choose to initiate the planning process.

If planning is conducted for the WRIA, one planning unit for the WRIA is to be appointed as follows: one member representing each county in the WRIA, appointed by the county; one member for each county in the WRIA (but not less than two) representing collectively all cities in the WRIA, appointed by the cities jointly; two members representing collectively all water-supply special purpose districts in the WRIA, appointed by all such districts jointly; one member representing collectively conservation districts in the WRIA, appointed by all such districts jointly; four members representing the general citizenry, appointed by the counties jointly; and six members representing various interest groups, appointed by the counties jointly. In addition, the largest purveyor in a WRIA is to be represented on a planning unit for a WRIA in King, Pierce, or Snohomish counties, whether the main offices of the purveyor are or are not located in the WRIA. The lead agency must notify the cities and districts in the WRIA that they are to convene to appoint members to the planning unit. The lead agency also provides staff support for the planning process. Procedures for conducting multi-WRIA planning and for appointing the members of one planning unit for the multi-WRIA area are established.

The counties in a WRIA or multi-WRIA area may choose a governmental entity other than the county with the greatest population in a WRIA to act as the lead agency for WRIA planning. They may also select as the planning unit for WRIA planning a pre-existing group with a composition substantially similar to the composition listed by the bill. An entity selected in this manner serves as the lead agency or planning unit if it

agrees to do so in writing. No planning unit appointed or selected for WRIA planning may possess the power of eminent domain or take an action that affects a completed or ongoing general adjudication proceeding for water rights.

For the development of plans, a county must have more than 15 percent of the area of a WRIA within its boundaries to be considered to be a county with territory in the WRIA. In general, each member of a WRIA planning unit must have lived in the WRIA for at least five years. None may be state employees or officials. Two of the members representing the general citizenry must be water right holders. In selecting "interest group" members, counties are encouraged to select persons from certain listed interest groups and other groups with interest in the WRIA. No person who is a member of a WRIA planning unit may designate another to act on behalf of the person as a member of the unit. If a member of a WRIA planning unit has a certain number of unexcused absences, the member's position on the planning unit is considered to be vacant.

WRIA plans may not interfere in any manner with a general adjudication of water rights. Such a plan may not impair or interfere with a water right that exists prior to the adoption of the plan. Each plan must acknowledge that the water rights of citizens are private rights to real property. All meetings of a WRIA planning unit are to be conducted as open public meetings. Some time must be set aside at the end of each meeting of a WRIA planning unit for public comments.

Each WRIA plan must contain certain elements and may include other elements added by the planning unit. Once organized, the first task of the planning unit is to prioritize these elements regarding their importance. A plan may not be developed such that its provisions are in conflict with state or federal law.

Plan Approval. Upon completing a proposed water resource plan for the WRIA, the WRIA planning unit must conduct at least one public hearing in the WRIA on the proposed plan. The planning unit then provides interim approval of its proposed plan by a simple majority vote and submits the plan to the DOE. The DOE must conduct at least one public hearing on the plan. The department must provide advice as to any sections or subsections of the plan that are in conflict with state or federal law and may provide other recommendations. The WRIA planning unit must vote on each recommendation provided by the DOE and on its advice but is not required to adopt either. The WRIA planning unit must approve a water resource plan for the WRIA by a two-thirds majority vote of the members of the planning unit. An approved plan is then submitted to the counties with territory within the WRIA for approval. The legislative authority of each of the counties with territory within the WRIA must conduct at least two public hearings on the WRIA plan. The counties, in joint session, may approve or reject the plan, but may not amend the plan.

If the plan is approved by the members of the legislative authorities, the plan is transmitted to the DOE. The department must adopt the approved WRIA water resource plan by rule. Instream flows established by the plan replace those set by the DOE.

Permit Processing Deadline. If an environmental impact statement (EIS) is not requested for an application, the deadline for processing water right permit applications for water in a WRIA for which a WRIA plan has been adopted is 180 days from the date a properly completed application is filed with the DOE. The deadline for processing an application for water in a WRIA for which a WRIA plan has not been adopted is one year. These deadlines do not include the time needed to supply information in response to one request by the DOE for additional information. If an EIS must be prepared regarding an application to appropriate water, the DOE must grant or deny the application within 90 days of the date the final EIS is available.

Funding. Once a WRIA planning unit is organized and has established its priorities, it may apply to the DOE for funding assistance for developing a water resource plan for the WRIA. The department is to provide \$500,000 per WRIA for each planning unit applying in this manner from appropriations made expressly for this purpose. The funding is to be provided on a first come, first served basis to the extent of the appropriations.

Liability. Local government is not liable for water planning except for a conflict with state or federal law about which it received notice from the state during the planning process. If the DOE advised a planning unit that a section or subsection of its WRIA plan is in conflict with state or federal law and the unit did not remove the conflict from its plan, the state is not liable for any judgment that may be awarded regarding the conflict.

Storage; General Adjudications. The development of multi-purpose water storage facilities is to be a high priority, and state agencies, local governments, and WRIA planning units must evaluate the potential for and benefits of storage.

A WRIA planning unit may request that a general adjudication of water rights be conducted for its WRIA or a portion of its WRIA. A Water Escrow Account is established in the State Treasury. Funds in the account are subject to appropriation and may be used for basin-wide water rights adjudications. The sum of \$500,000 is transferred to the account from the general fund.

Interties. The authorized uses of an intertie include the exchange of acquired water between public water systems. Interties are no longer prohibited from including the development of new sources of water supply to meet future demand. The DOE may not deny or limit a change-of-place of use for an intertie on the grounds that the

holder of a permit has not yet put all the water authorized in the permit to beneficial use.

Relinquishment. Under current law, a water right is not relinquished for nonuse if the right is claimed for a determined future development that is to take place within 15 years of the most recent beneficial use of the water right. That determined future development may now expressly take place at any time within the 15-year period.

General Permits. The DOE is directed to develop a streamlined, general permit system for certain uses of water. The use must consume less than 5,000 gallons of water per day. It cannot impair senior water rights. Water diverted from a stream or drawn from an aquifer must, following use, be discharged back into or near the point of diversion or withdrawal and, when discharged, must meet state water quality standards. An application for such a permit must be processed within 120 days. If the DOE receives complaints regarding the impairment of a senior water right, the department must make reasonable efforts to resolve it through agreement of the parties.

Substitute Bill Compared to Original Bill: Removed from the original bill are provisions that prohibit the DOE from setting instream flows until 1999. The flows set by a WRIA plan replace any set by DOE. Also removed from the original bill are provisions for allowing a planning unit to propose to develop habitat conservation measures and directing the Governor to request federal endorsement of the planning, and for referring to administrative remedies available to the DOE for resolving conflicts between senior right holders and persons issued general permits. Added by the substitute bill are provisions for allowing counties to appoint lead agencies and planning units other than those specified by the bill, prohibiting planning units from possessing the power of eminent domain, requiring WRIA plans to acknowledge that citizens' water rights are private rights to real property, and setting the deadline for processing permits for which an EIS must be prepared.

Appropriation: None.

Fiscal Note: Requested on January 5, 1996.

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

Testimony For: (1) Watershed planning should be conducted locally. (2) The DOE's permit processing system is completely bogged down; deadlines for processing permits need to be established.

Testimony Against: (1) Several local planning groups have already been set up to do watershed planning; they should not be replaced by new planning groups, as in the

original bill. Local governments should be able to designate the lead agency and determine the composition of the planning unit. (2) The DOE should not be prohibited from setting instream flows until 1999, as in the original bill. (3) The provisions regarding interties may not be necessary; the pipeline five controversy has been worked out. (4) One size does not fit all; all interests with a stake in the resource should be at the planning table. (5) The tribes should be included in the WRIA planning process. (6) The state needs to retain the power to protect the state's broader interests, such as protecting instream flows for salmon. (7) The use of water under the general permit system set up by the bill is neither nonconsumptive nor nonbypass. (8) The permit processing deadlines should be shortened. (9) Water quantity and quality planning should be integrated, as through habitat planning. (10) \$500,000 for planning may be too much for some WRIs and not enough for others. (11) Planning units should be able to identify data requirements. (12) Implementation of local plans should be detailed, including the promotion of storage, transfers, and conservation.

Testified: Jerry Harper, Ralph Thomsen, and Darryll Olson, Columbia/Snake River Irrigators' Association; K. O. Rosenberg; Kathleen Collins, Washington Water Alliance; Steve Linstrom, Snohomish-King Water District Coalition; and Mark Triplett, Washington Aggregate Concrete Association (in favor). Jim Miller, Washington Utility Council (in favor in concept). Ted Bottiger, Washington Conservation District Association; Dave Arbaugh, Washington Public Utilities Association; Walt Canter, Water/Sewer Districts Association; Paul Parker, Washington State Association of Counties; Howard Langhery; Dick Dorsett, Pierce County; Dawn Vyvyan, Yakima Tribal Council; Linda Crerar, Department of Ecology; Mary Burke; and Max Benitz, Jr., Tri-County Water (commented on the bill). Judy Turpin, Washington Environmental Council; Bruce Wishart, Sierra Club; and Joe LaTourrette, Washington Rivers Council (opposed).

HOUSE COMMITTEE ON APPROPRIATIONS

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 & Ecology. Signed by 21 members: Representatives Huff, Chairman; Clements, Vice Chairman; Pelesky, Vice Chairman; Basich; Beeksma; Brumsickle; Carlson; Chappell; Cooke; Crouse; Dyer; Foreman; Hargrove; Hickel; Lambert; Linville; McMorris; Reams; Sehlin; Sheahan and Talcott.

Minority Report: Do not pass. Signed by 6 members: Representatives H. Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Jacobsen; Kessler; Poulsen and Rust.

Staff: Nancy Stevenson (786-7137).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Agriculture & Ecology: Stricken by the second substitute bill is the section which creates the water escrow account and transfers \$500,000 from the state general fund to the account.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Watershed planning needs to be conducted with the locals in charge. There is support for the local planning process and the associated funding. In the long run the application workload will decrease as plans are completed.

Testimony Against: There are fiscal concerns with the "one size fits all" grant of \$500,000; because each watershed is different, it may cost more in one and less in another. If all the involved parties are not involved in the planning process, there are likely to be litigation costs.

Testified: Representative Gary Chandler, prime sponsor; Paul Parker, Association of Washington Counties; and Kathleen Collins, Washington Water Policy Alliance (in favor). Mike Grady, Department of Community Trade and Economic Development; and Judy Turpin, Washington Environmental Council (concerns).