

# HOUSE BILL REPORT

## ESHB 2514

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### As Passed Legislature

**Title:** An act relating to watershed management.

**Brief Description:** Providing for integrated watershed management.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Chandler, Linville, Mastin, Parlette, Koster, Anderson, Regala and Cooper).

**Brief History:**

**Committee Activity:**

Agriculture & Ecology: 1/12/98, 1/23/98, 2/5/98 [DP];

Appropriations: 2/7/98 [DPS].

**Floor Activity:**

Passed House: 2/17/98, 86-10.

Passed Legislature.

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### HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** Do pass. Signed by 6 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Linville, Ranking Minority Member; Koster; Mastin and Sump.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Schoesler, Vice Chairman; Anderson, Assistant Ranking Minority Member; Cooper and Regala.

**Staff:** Bill Lynch (786-7092) and Kenneth Hirst (786-7105).

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### HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 23 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; H. Sommers, Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Benson; Carlson; Cooke; Crouse; Grant; Kessler; Lambert; Linville; Lisk; Mastin; McMorris; Parlette; D. Schmidt; Sehlin; Sheahan and Talcott.

**Minority Report:** Do not pass. Signed by 7 members: Representatives Chopp; Cody; Keiser; Kenney; Poulsen; Regala and Tokuda.

**Staff:** Jeff Olsen (786-7157).

**Background: Water Resource Management.** With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water may be established under a permit system. Certain uses of groundwater not exceeding 5,000 gallons per day are exempted from this permit requirement, however. 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). The DOE also limits the discharge of pollution to the surface and ground waters of the state.

Water Resource Planning. The groundwater code permits the DOE to designate and manage groundwater areas, sub-areas, or depth zones to prevent the overdraft of groundwaters. As amended in 1985, the code allows groundwater management studies to be initiated locally and allows local governments to assume the lead agency role in developing local groundwater management programs. 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 DOE to develop the program in segments. Under the act, the DOE has divided the state into 62 water resource inventory areas (WRIAs).

The Legislature enacted legislation pertaining to watershed planning during the 1997 session, but most of the bill's provisions were vetoed.

**Summary of Bill:** Local governments may choose to conduct watershed planning. The scope of the watershed planning must include water quantity elements, and may include elements pertaining to water quality, the coordination or development of protection or enhancement of fish habitat, and the setting of minimum instream flows in the watershed. Watershed planning may be conducted on a single WRIA or multi-WRIA basis.

Initiating Watershed Planning. Watershed planning is initiated for a single WRIA with the concurrence of all counties within the WRIA, the largest city or town within the WRIA, and the water supply utility obtaining the largest quantity of water from the WRIA. In a multi-WRIA area, watershed planning is initiated with the concurrence of all counties within the multi-WRIA area, the largest city or town within each WRIA, and the water supply utility obtaining the largest quantity of water in each WRIA. These entities designate the lead agency for the planning effort and indicate how the planning effort will be staffed. If all these entities agree to proceed with watershed planning, they must invite any affected Indian tribes within the management area to participate. The tribes which accept the invitation become part of the initiating governments.

The initiating governments must work with state, local, and affected tribal governments in developing a planning process. The initiating governments may hold public meetings to develop a proposed composition of the planning unit and a proposed scope of work. The proposed composition of the planning unit must provide for representation of a wide range of water resource interests.

State agencies representation on the planning units is determined by the initiating governments in consultation with the Governor's office. Technical assistance by the state may only be provided at the request of and to the extent desired by the planning unit. State agencies may organize and agree on their representation on the planning unit.

Coordinating the Work of the Planning Unit. A planning unit must review the historical data such as fish runs, weather patterns, land use patterns, seasonal flows, and geographical characteristics of the management area, and also review existing planning, projects, and activities regarding natural resource management or enhancement in the management area. The planning unit must incorporate any products of efforts which are either completed or are ongoing, as appropriate, in order not to duplicate efforts.

The planning unit is also encouraged to identify projects and activities in the area that it believes will likely serve short-term or long-term management goals and warrant immediate financial assistance. If there are multiple projects, the planning group must give consideration to ranking projects that have the greatest benefit and schedule those projects to be implemented first.

Water Quantity Component. The water quantity component of watershed planning must include an assessment of water supply and use in the management area and the development of strategies for future use. The assessment must include an estimate of the surface and ground water present in the management area; an estimate of the surface and ground water available in the management area, taking into account seasonal and other variations; an estimate of the amount of water in the management area represented by claims in the water rights registry, water use permits, certificated rights, existing minimum instream flow rules, federally reserved rights, and any other rights to water; an estimate of the surface and ground water actually being used in the management area; an estimate of the water needed in the future for use in the management area; and an estimate of the surface and ground water available for further appropriation, taking into account minimum instream flows established or which will be established in the management area, including data necessary to evaluate necessary flows for fish.

The strategies for increasing water supplies in the management area may include, among other strategies, use of reclaimed water, aquifer recharge and recovery, and water conservation. The purpose of the strategies is to have sufficient water to satisfy minimum instream flows for fish and to provide for future out-of-stream uses.

Water Quality and Habitat Components. The watershed planning component for water quality, if included by the initiating governments, must contain: an examination, based on existing government studies, of the degree to which legally established water quality standards are being met in the management area; an examination based on existing government studies of the causes of water quality violations in the management area; an examination of the legally established characteristic uses of each of the nonmarine bodies of water in the management area; an examination of any total maximum daily load (TMDL) established for nonmarine bodies of water in the management area, unless a TMDL process commenced in the management area before the watershed planning has begun; and recommended means of monitoring whether actions taken to implement the approach to improve water quality are sufficient to achieve compliance with water quality standards.

If the initiating governments include a habitat component as part of the watershed planning process, the watershed plan must be coordinated or developed to protect or enhance fish habitat in the management area. Planning for habitat must be integrated with strategies developed under other processes to respond to listings of fish species under the federal Endangered Species Act.

Instream Flows. The initiating governments may choose by a majority vote to include a minimum instream flow component as part of the watershed plan. If minimum instream flows have already been set for a stream, a unanimous vote of all government members and tribes on the planning unit is required to request the Department of Ecology to modify the flows. The Department is directed to attempt to achieve consensus and approval among the members of the planning unit regarding the instream flows. Approval of instream flows is achieved if all government and tribal members on the planning unit who are present for a recorded vote unanimously agree to support the proposed flows, and a majority of the other interests on the planning unit vote in favor of the proposed flows.

The priority date for new minimum instream flows is established at two years after the date when the planning unit first received funding from the Department of Ecology, except that the planning unit may establish some other priority date by a unanimous vote. The priority date cannot be later than the effective date of the rule establishing the flow. The Department must consult with affected tribes in the management area before setting instream flows. Flows which have already been established, but which are modified, retain the same priority date previously established by rule for that portion of the minimum flow. If approval is not achieved within four years, the DOE may promptly initiate rule-making to establish minimum instream flows for these streams. The DOE has two years to set the instream flows when approval is not achieved.

The DOE must use rulemaking to set minimum instream flows. The DOE may adopt these rules either by the regular rules adoption process, the expedited rules adoption process, or through a rules adoption process that uses the public hearings and notice

provided by the planning unit and the county to the greatest extent possible. Such rules do not constitute significant legislative rules, and do not require the preparation of small business economic impact statements.

Approval of Watershed Plan. Approval of a watershed plan by the planning unit is achieved if there is agreement by all the units of government on the planning unit and a majority of nongovernmental interests on the planning unit also approve. The planning unit submits the watershed plan to each of the counties with territory in the management area. If the planning unit receives funding from the Department of Ecology beyond the initial organizing grant, a proposal approved by the planning unit must be submitted to the counties for approval within four years of when funding was first received.

The legislative authority of each of the counties with territory in the management area must provide public notice of and conduct at least one public hearing on the watershed management approved by the planning unit. After the public hearings, the county legislative authorities must convene a joint session to consider the watershed plan. The counties may approve or reject the watershed plan, but may not amend it. The watershed plan must be approved by each of the county legislative authorities with territory in the management area.

If a proposed integrated watershed management is not approved, it is returned to the planning unit with recommendations for revisions. If approval of the revised plan is not achieved, the process is terminated.

A planning unit cannot add an element to its watershed plan that creates an obligation for a unit of government unless the members of the planning unit appointed to represent that unit of government agree to adding the element which creates the obligation as evidenced by a recorded vote. If the watershed plan is approved by the planning unit and the counties, and the plan creates obligations for state agencies, the obligations are binding on the state agencies and the agencies must adopt implementing rules and take other actions to fulfill their obligations as soon as possible. State agencies must also adopt by rule the obligations which are binding upon county governments. The counties must adopt any necessary implementing ordinances and take other actions to fulfill obligations which are binding upon them.

Limitations on Watershed Plans. Watershed plans developed in this manner may not contain provisions that: (a) are in conflict with state statute, federal law, or tribal treaty rights; (b) impair or diminish in any manner existing water rights; (c) require a modification in the basic operations of a federal reclamation project the water right of which has a priority (seniority) date that is earlier than the effective date of the bill, or alter in any manner whatsoever the quantity of water available under the water right for the project; (d) affect an ongoing general adjudication of water rights; (e) modify a waste discharge permit issued under water pollution laws; (f) modify or require the modification of activities or actions taken or intended to be taken under a habitat restoration work schedule; or (g) modify or require the modification of activities or

actions taken to protect or enhance fish habitat if the actions are part of an approved habitat conservation plan or similar agreement, or part of a water quality program adopted by an irrigation district or a board of joint control.

Nothing in this legislation may create any obligations or restrictions on forest practices which are in addition to or inconsistent with the Forest Practices Act and its implementing rules. Watershed plans may contain recommendations for changing existing local ordinances or state rules, but may not change the ordinances or rules.

Financial Assistance. The DOE must develop and administer a grant program to provide direct financial assistance to planning units. Three separate grants may be awarded: initial organizing grants of up to \$50,000 for a single WRIA and up to \$75,000 for a multi-WRIA; grants of up to \$250,000 per WRIA for watershed assessments; and grants of up to \$250,00 per WRIA for the development of a watershed plan. The DOE is directed to use the statutory eligibility criteria rather than rules, policies, or guidelines when evaluating grant applications.

Except for the original organizing grant, preference is to be given to applications in the following order of priority: (1) applications from existing planning groups that have been in existence for at least one year; (2) applications from multi-WRIAs that propose to address protection and enhancement of fish habitat in watersheds that have aquatic species listed or proposed to be listed as endangered or threatened under the ESA, and for which there is evidence of an inability to supply adequate water for population and economic growth; (3) applications from single WRIAs that propose to address fish habitat in watersheds with ESA listings or proposed listings, and for which there is evidence of an inability to supply adequate water for population and economic growth; (4) applications from multi-WRIAs that propose to address fish habitat in watersheds with ESA listings, and for which there is evidence of an inability to supply adequate water for population and economic growth; and (5) applications from single WRIAs that propose to address fish habitat in watershed with ESA listings, and for which there is evidence of an inability to supply adequate water for population and economic growth.

The DOE may not impose any local matching requirements as a condition for grant eligibility or as a preference in receiving a grant.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately. However, the bill is null and void if not funded in the budget.

**Testimony For:** (Agriculture & Ecology) The bill is complex, but it addresses the comments provided to the Five Corners in their public hearing. It is a step in the right

direction. The bill puts local and state people together in a collaborative forum to address watershed issues. Cities appreciate having a role in initiating watershed planning and controlling their obligations under it. The bill fits the counties' requirements in regard to allowing, but not requiring, watershed planning, addressing both water quality and water quantity, acknowledging existing and on-going efforts, providing state funding for planning and technical support, and not allowing a state review for approval at the end of the process.

(Appropriations) The original bill was the result of bipartisan negotiations with the House of Representatives, the Senate and the Department of Ecology. Interest groups expressed concerns about the bill, and it was placed on hold. Interested parties are now providing input and the bill is being rewritten to address their concerns.

**Testimony Against:** (Agriculture & Ecology) There needs to be a commitment to provide sufficient funding. It should be clearer that if watershed planning is not done under this process, the state will do it. The DOT's watershed mitigation program should be woven into the bill. The exemption for HCP's and forest practices should be clarified. The planning unit's activities should be open public meetings with public input. The collaborative effort used in a hydroelectric re-licensing procedure in the northwest gets balanced results. Water supply utilities need more certainty that their rights and interties will not be disrupted. The bill needs to state more clearly what the goals of a watershed plan are. Growth management requirements and the availability of an adequate water supply should be linked. The deadline for setting instream flows should be lengthened. Private land ownership should be acknowledged in the process. Existing water rights and completed and ongoing adjudications must not be overridden. State funding for implementation is needed. The tribes negotiate matters with other sovereign governments, such as the state and federal governments, not with local governments. This bill should be clearly focused on fisheries problems. The Yakima Watershed Council has been innovative; it should be protected. Without a more balanced hydraulic continuity policy, the permit system will continue to be locked up. Obligations should not be created for special purpose districts or private landowners without their agreement. Using existing groups as a planning unit should be the highest priority. Conservation groups must be guaranteed a place at the planning table. Implementation is needed for existing plans. Add flood plain management as an element of the plan.

(Appropriations) There are no clear standards. Local communities will have difficulties with complex, technical decisions. The best available science is not included in the plan.

**Testified:** (Agriculture & Ecology) Tom Fitzsimmons, Washington Department of Ecology (in favor); Dave Williams, Association of Washington Cities; Paul Parker, Washington State Association of Counties; Jerry Alb, Washington Department of Transportation; Tim Boyd, Washington Forest Protection Association; Walter Cantor, Washington State Association of Sewer and Water Districts; Bill Henkel and Claude

Oliver, Tri-County Water Resource Agency; Kristen Harte, Washington PUD Association (Pro with concerns); Al Aldrich, Snohomish County PUD (Pro with concerns)); Dave Arbaugh, Kitsap and Chelan County PUD's; Steve Lindstrom, SnoKing Water Districts Association; Bill Robinson, NWSSC (commented); Dave Ducharme, Northwest Hydroelectric Association; Dan Pfeiffer, Washington Water Power; Diana Gail, Seattle Public Utilities (Pro with concerns); Doug Levy and Jim Miller, City of Everett (Pro with concerns); Mary Burke, Washington Cattlemen's Association (Con); Steve Robinson, Northwest Indian Fisheries Commission; Dawn Vyvyan, Jerry Meninick, and Harris Teo, Jr., Yakama Indian Nation (Con); Randy Scott, Quinault Indian Nation Kathleen Collins, Washington Water Policy Alliance (Pro); Dick Ducharme, Yakima Growers and Shippers, Wenatchee Traffic Association, Building Industry Association; Karla Carlson, Muckleshoot Indian Tribe (Con); Judy Turpin, Washington Environmental Council (Con); John Rosapepe, Sierra Club (Con); Bruce Wishart, People for Puget Sound; Lois Lopez; Dave Palmer, Chehalis River Council; Eric Johnson, Public Ports Association; Scott Hazelgrove, Association of Washington Business (Pro with concerns).

(Appropriations) Representative Chandler, prime sponsor; Tom Fitzsimmons, Department of Ecology; Dawn Vyvyan, Yakima Nation (pro); and Bruce Wishart, People for Puget Sound (con).