

SENATE BILL REPORT

E2SHB 1836

As of March 30, 2015

Title: An act relating to state drought preparedness.

Brief Description: Concerning state drought preparedness.

Sponsors: House Committee on General Government & Information Technology (originally sponsored by Representatives Stanford, Blake, Lytton, Walkinshaw, Gregerson and Tarleton).

Brief History: Passed House: 3/05/15, 57-41.

Committee Activity: Agriculture, Water & Rural Economic Development: 3/24/15.

SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

Staff: Diane Smith (786-7410)

Background: Executive Branch Drought-Emergency Functions. Before it can declare a drought emergency by administrative order, the Department of Ecology (Ecology) must determine that an area is experiencing or expected to experience less than 75 percent of normal water supply and is expected to suffer undue hardships as a result of dry conditions.

Prior to issuing an order, Ecology must first consult with federal and state agencies identified in the drought contingency plan that is periodically revised by Ecology, and receive the written approval of the Governor.

Upon the issuance of an order, Ecology may authorize emergency withdrawals of public surface and ground waters as long as the withdrawals (1) are put to beneficial uses (2) replace water rights that cannot be exercised due to the drought and (3) will not reduce flows below the essential minimum for fisheries and other state and federal interests including power generation, navigation, and existing water rights. Domestic and irrigation uses must be given priority in determining beneficial uses. Emergency withdrawal orders must contain termination provisions in case the emergency withdrawal conflicts with flow levels derived from this analysis. The duration of an emergency withdrawal is limited to the duration of the drought emergency order which is one year with a one-year extension.

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.

The issuance of 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 its 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.

Joint Legislative Committee on Water Supply During Drought – Legislative Drought Committee (LDC).

The LDC is composed of eight legislative members. The LDC meets when a drought order is in effect. The LDC must include the chairs of the water resources committees of each legislative chamber. The membership is appointed by the Speaker of the House and the President of the Senate.

Once convened, the LDC may request and review information relating to the state's water supply conditions and information about the actual or anticipated economic, environmental, and other impacts of decreased water supply. The LDC is empowered to make recommendations to the Legislature on budgetary and legislative actions to improve the state's drought response programs and planning.

When a drought conditions order is in effect, Ecology must provide the LDC with at least monthly reports describing Ecology's drought response activities as well as those of other state and federal agencies. The report must include information regarding applications for, and approvals and denials of, emergency water withdrawals and temporary changes or transfers of water rights.

Summary of Bill: Executive Branch Drought-Emergency Functions. Ecology is authorized to use any funds in the Preparedness Account to preemptively negotiate agreements or contracts before a drought is declared. This includes effects on drinking water supplies, agricultural activities, and fish or wildlife survival. Ecology must not limit its analysis only to anadromous or commercial species when making a determination of whether or not an emergency drought water withdrawal authorization affects fisheries.

The requirement for Ecology to publish drought orders in newspapers of general circulation in the areas affected by a drought order is changed to allow Ecology to publish as it finds appropriate.

Prior to issuing the drought order, Ecology must include consultation with and obtaining the views of any affected federally recognized Indian tribes and notify the LDC.

After issuing an order, Ecology's duty to ensure that emergency withdrawals of public surface and ground waters do not reduce flows below the essential minimum for fisheries, and must include consideration that is not limited to anadromous or commercial species.

LDC. The LDC may convene as follows:

- at times other than after the Governor's declaration of drought and DOE's issuance of its order;
- upon the chair's determination that a declaration of drought will likely be issued in the next year; and
- upon the chair's determination that state drought preparedness planning would improve the building legislative institutional knowledge.

The Speaker and the President must offer the chairs of the legislative committees overseeing water policy the opportunity to serve.

Members serve until their successor is appointed or until the cessation of their service from the body being represented by the member.

A majority of the LDC is authorized to call a meeting if no chair is currently designated.

New and clarified authority of the committee includes (1) reviewing information related to water supply conditions before a drought is declared; (2) providing non-binding advice to drought response entities; (3) providing policy oversight and assistance in developing drought-related budget requests; (4) coordinating with drought response entities to consider lessons learned in drought and near-drought years to improve efforts to preemptively mitigate the impacts of a drought; and (5) requesting and reviewing information related to flooding and other impacts of increased volatility in the water cycle.

Ecology must annually provide the LDC with an assessment of predicted water supply for the coming year regardless of whether the LDC is activated.

Conforming amendments are made to other sections of water law.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: These are good government ideas to provide additional opportunities to the committee and to consult with tribes. Allowing DOE to negotiate lease agreements negotiated in advance of the formal declaration allows avoidance of the drought premium. It helps bridge the time gap between the declaration and the leases bringing water to people whose water supplies are already uncertain. The bill adds clarity and flexibility without upsetting the existing priority given to agricultural uses. Fisheries are already a listed priority.

Persons Testifying: PRO: Jennifer Holderman, Dept. of Ecology; Evan Sheffels, WA Farm Bureau.

Persons Signed in to Testify But Not Testifying: No one.