

SENATE BILL REPORT

2SHB 2200

As Reported By Senate Committee On:
Ecology & Parks, February 23, 1996
Ways & Means, February 26, 1996

Title: An act relating to water resource management.

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

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Chandler, Mastin, Lisk, Mulliken, Honeyford, Robertson, Basich, Horn and Goldsmith).

Brief History:

Committee Activity: Ecology & Parks: 2/20/96, 2/23/96 [DPA].
Ways & Means: 2/26/96 [DPA].

SENATE COMMITTEE ON ECOLOGY & PARKS

Majority Report: Do pass as amended.

Signed by Senators Fraser, Chair; Fairley, Vice Chair; McAuliffe and Spanel.

Staff: Gary Wilburn (786-7453)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Rinehart, Chair; Loveland, Vice Chair; Bauer, Drew, Fraser, Hargrove, Kohl, McDonald, Pelz, Quigley, Sheldon, Snyder, Spanel, Sutherland, West, Winsley and Wojahn.

Staff: Cathy Baker (786-7708)

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 exempt 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).

Watershed Planning. Water resource planning is conducted under a variety of state and local authorities. The principal authority for basin water resource plans is provided in statute to the state Department of Ecology, wherein the department is to develop a comprehensive state

water resources program. The department has developed the state program through addressing specific watersheds in regional, or "basin," plans. It has divided the state by rule into 62 "water resource inventory areas," commonly known as "WRIAs", and has adopted a comprehensive plan for a majority of these basins. In 1991 the Legislature authorized a pilot process of regionally developed basin plans with the participation of all interests at the regional level. Under this authority, plans have been developed in the Methow and Dungeness/Quilcene basins.

There are numerous other planning efforts around the state addressed to specific water resource issues or to specific watersheds. Many of these have been generated at the local level with minimal state guidance or financial assistance, such as the Yakima Watershed Council and the Central Puget Sound Water Supply Planning Group. Other activities are conducted with state financial and technical assistance and are directed to narrower water resource management and supply issues, such as planning authorized under legislation pertaining to Ground Water Management Areas, Coordinated Water Supply Planning, and watershed action planning under the Puget Sound Water Quality Management Plan. Still other water-related planning may be conducted by local government as part of their comprehensive land use planning under the Growth Management Act. Conservation districts also develop plans for riparian habitat and stream improvements for more limited stream segments. Numerous other agencies, property owners, community organizations, and local governments are engaged in planning for improvements to rivers, streams, lakes and other water bodies.

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 Amended Bill: 1. Basin assessments. The purposes of basin assessments are specified, and include timely permit decision-making, the conditions for permit issuance, supporting data collection and management needs, and to assist in planning and policy decisions. The assessments are to be prepared by the Department of Ecology, and may be undertaken with the assistance of other governmental entities in the basin. The department must develop a standardized intergovernmental agreement for such assistance.

A two-stage process for basin assessment preparation is specified. The first stage includes data collection, identification of data gaps and environmental trends, and recommendations regarding priority areas, issues, data and resource issues for further study. The second stage may be such further analysis, guided by the recommendations in the level I analysis. The department is to develop uniform procedures for basin assessment data management and accessibility. The timeline for preparation is to be established at the beginning of the process.

2. Basin planning. Locally based basin planning is declared an essential component of developing the state's water management approaches. Planning is to be conducted in two phases. In Phase I, or "prescoping" phase, a notice of intent to plan is initiated by the signature of at least two local water-supply or -management governments, or one such government and a tribe. The contents of the notice are specified.

Within 60 days of the notice, the initiating entities are to call a meeting of all general purpose local governments, water special districts, state and federal agencies with water or natural resource management responsibilities, and tribes, for the purpose of forming an initial basin planning unit. A lead agency or agencies are to be designated to administer the prescoping and full planning phases. The planning unit's tasks are specified, including identifying all stakeholder interests, the potential range of issues, data collection needs, and developing a scope of work. The planning unit is to establish its own decision-making process.

Phase II is the full planning stage, which is commenced by a meeting of all stakeholder interests. Within 60 days of the stakeholder meeting an expanded basin planning unit is to be formed with representatives as follows: three from state government, three from local government, three from participating tribes, one each from specified interest categories, and several representing the general public. The selection methods for different categories of representatives are specified. A public involvement advisory committee is to be created. At least two public hearings are to be held on the scope of work prior to its adoption.

The timeline for plan preparation is to be established at the onset of the process. Consensus is the preferred decision-making method for the expanded planning unit. The basin plan may include recommended changes to adopted instream flow rules and recommended levels for streams without adopted rules.

The minimum elements of a basin plan are specified. At least two public hearings are to be held before adopting a draft plan. Procedures for review and comment by all local governments on a draft plan are specified, which include a remand to the planning unit if the plan is found to be inconsistent with adopted land use plans and shoreline policies. The plan is submitted to the Department of Ecology, which may remand the plan for identified inconsistencies with state or federal law. The methods of adoption by various governmental jurisdictions of the plan are described. The Department of Ecology is to adopt a rule reflecting state approval and make necessary changes in existing state rules that would otherwise preclude implementation. The Department of Ecology must adopt guidelines to implement the basin planning procedures of the legislation.

3. 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.

4. Regulatory authority. The Department of Ecology may regulate water users only in the following situations: (1) where all the rights at issue are permitted or certificated rights; (2) where an instream flow rule has been adopted; or (3) where water is being withdrawn without any right or authority whatsoever. In those circumstances, the department may regulate either through regulatory orders, or by seeking a court order.

If one or more of the rights are not permitted or certificated, then the department must bring an action in court seeking any necessary relief. If brought to a state court, it must be brought in the superior court where the water diversions are located. The legislation does not affect the general adjudication or relinquishment sections of existing water law, nor does it modify existing powers of the Department of Ecology, except as provided.

5. Water rights for instream purposes. Any person is explicitly allowed to acquire rights for "instream uses," without a physical diversion of water. A water right holder can temporarily transfer a right to an instream use, and later transfer all or part of it back to the initial use. If the state acquires water rights conditioned on its use being limited to instream use, it must be managed as a trust water right.

6. Water rights administration efficiencies. A number of provisions to increase the efficiency and effectiveness of water rights permit processing are provided. Many of the requirements for permit applicants, the Department of Ecology and the Pollution Control Hearings Board (PCHB) are changed.

Applicants must, among other things:

- (1) file a completed application, which is the date of priority of future water rights;
- (2) publish an expanded notice that provides for 30 days of comment by the public;
- (3) provide additional information directly relevant to the application under consideration to assist Ecology in its investigation; and
- (4) consolidate related right applications under a single ownership.

Ecology must, among other things:

- (1) adopt rules about what is considered a "complete" application, including content and timelines;
- (2) establish protocols for what information must be provided by the applicants;
- (3) adopt forms to allow applicants to consolidate permits;
- (4) make available to the public a summary of the proposed decision on a permit applications, and consider comments received;
- (5) authorize short-term uses of water without notice or evaluation under certain conditions;

- (6) establish a register of new applications, changes and transfers; and
- (7) define and implement procedures for certain "de minimus" appropriations of surface water, including processing permits within 60 days and waiving evaluation of the application.

The PCHB must provide for expedited, single-member review of contested water allocation decisions and appeals on requests for information. Procedures for appeals of single-member decisions are specified. Appellants at PCHB hearings bear the burden of proof.

7. Storage. Multiple purpose storage facilities are to be a high priority for water resource programs, and governmental agencies are to evaluate the potential for development of new facilities.

The provisions regarding basin assessments, basin planning and a general permit system for nonconsumptive uses of water are null and void unless such provisions are referenced and funded in the omnibus appropriations act by June 30, 1996.

Amended Bill Compared to Substitute Bill: The amendment deletes the provisions of the House bill on watershed planning and substitutes new provisions regarding such planning. The amendment deletes provisions in the House bill regarding interties and relinquishment exceptions, and retains the House bill provisions on the adjudications account, general permits and evaluation of multiple purpose storage facilities. The amendment adds the provisions on basin assessments, regulatory authority after Sinking Creek, water rights for instream purposes, and water rights administration efficiencies (see headings above).

Ways & Means Amendment Compared to Ecology & Parks Amendment: The provisions creating a water rights adjudication account are removed. The null and void clause is expanded to include all provisions in the bill that have fiscal impact.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For (Ecology & Parks): Local governments are most representative of the interests within a water basin and should be the lead entities for conducting watershed planning.

Testimony Against (Ecology & Parks): The bill excludes many important interests and agencies from participating in watershed-level planning, such as state agencies and the tribes.

Testified (Ecology & Parks): Representative Chandler (prime sponsor); Terry Hunt, WA St Grange (pro); Jim Miller, Assn. WA Cities/City of Everett; Don Montford, Birch Bay Water District/ WA Assn. of Sewer & Water Districts; Dave Arbaugh, PUD Assn.; Paul Parker, WA State Assn. of Counties (pro); Dick Ducharme, Yakima Growers & Shippers (pro); Steve Robinson, NW Indian Fisheries Comm'n (con); Dawn Vyvyan, Yakama Nation (con).

Testimony For (Ways & Means): Basin assessments and regional water resources planning will help local communities address water resource issues. Funding should be provided in the budget for these activities.

Testimony Against (Ways & Means): The House bill provides a better approach for regional water resources planning.

Testified (Ways & Means): Representative Chandler, original prime sponsor; Judy Turpin, WA Environmental Council; Steve Lindstrom, Sno-King Water District Coalition; Dave Williams, Assn. of Cities; Dave Arbaugh, Assn. of Public Utility Districts; Doug Levy, City of Everett.