

HOUSE BILL REPORT

2SHB 2054

As Amended by the Senate

Title: An act relating to water resource management.

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

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Chandler, Clements, Mastin and Honeyford).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/24/97, 2/26/97, 3/5/97 [DPS];
Appropriations: 3/8/97 [DP2S(w/o sub AGECE)].

Floor Activity:

Passed House: 3/14/97, 61-35.
Senate Amended.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Delvin; Koster; Mastin and Sump.

Minority Report: Without recommendation. Signed by 4 members: Representatives Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper and Regala.

Staff: Kenneth Hirst (786-7105).

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 19 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; Doumit,

Assistant Ranking Minority Member; Benson; Carlson; Cooke; Crouse; Grant; Lambert; Lisk; Mastin; McMorris; Parlette; D. Schmidt; Sehlin; Sheahan and Talcott.

Minority Report: Do not pass. Signed by 11 members: Representatives H. Sommers, Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Chopp; Cody; Keiser; Kenney; Kessler; Linville; Poulsen; Regala and Tokuda.

Staff: Nancy Stevenson (786-7137).

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 DOE 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, subareas, 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 Bill: WRIA Planning. The county with the largest population residing within a WRIA may choose to initiate local water resource planning for the WRIA. 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 public water utilities in the WRIA, appointed by the utilities jointly; one member representing collectively all conservation districts in

the WRIA, appointed by the 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. If one or more federal Indian reservations are in the WRIA, the planning unit includes a tribal representative of the tribes on the reservations, appointed by the tribes. Representatives of the departments of Ecology, Fish and Wildlife, and Transportation are nonvoting members of the planning unit. In addition, the largest water 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. Except for multi-WRIA planning, the lead agency for WRIA planning follows: in western Washington, the largest water utility in the WRIA; in eastern Washington, the county with the largest population residing in the WRIA. The lead agency 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 multi-WRIA area choose a governmental entity to act as the lead agency for WRIA planning. The entity selected serves as the lead agency if it agrees to do so in writing. No planning unit appointed for WRIA planning may possess the power of eminent domain.

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 for the development of plans. Certain qualifications for the members of the planning unit are listed. Two of the members representing the general citizenry must be water-right holders. The planning unit is to begin work when two-thirds of its eligible members have been appointed. 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 or with federal reclamation projects. The plan cannot establish standards for water quality or regulate water quality, directly or indirectly. A plan may not be developed such that its provisions are in conflict with state or federal law.

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 planning unit for public comments. The objective of a planning unit is to reach consensus and its procedures for decision-making are to provide that majority voting will be used only if achieving consensus has not been successful.

Contents of the Plan. Each plan must include an assessment of water supply and use in the WRIA; an identification of the water needed collectively for future uses; a quantitative description of the groundwater and surface water available for further appropriation; strategies for increasing water supplies in the WRIA; an identification of areas that provide for the recharge of aquifers from the surface and areas where aquifers recharge surface bodies of water; and an identification of areas where voluntary water-related habitat improvement projects or voluntary transactions providing for the purchase of such habitat or easements would provide the greatest benefit to water-related habitat in the WRIA, and a prioritization of the areas based on their potential for providing such benefits. A planning unit cannot set instream flows for the main stem of the Columbia River or the Snake River. It has the authority to set instream flows on other rivers and streams in its planning area only if its rivers and streams empty into the Columbia or Snake rivers or marine water within or at the boundaries of its planning area, or the rivers and streams are tributaries to rivers and streams that do so within or at the boundaries of its planning area.

Plan Approval. Upon completing a proposed water resource plan for the WRIA, the planning unit must provide notice for and 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 DOE must provide advice about 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 provide notice for and 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 DOE must adopt the approved WRIA water-resource plan by rule. The DOE may request the local superior court to rule on conflicts with state or federal law in the plan through a declaratory judgement. A decision of the court is reviewable. Instream flows established by the plan replace those set by the DOE. Any action taken by a state agency regarding or affecting water resources in a WRIA for which such a plan has been adopted must be taken in a manner that is consistent with the plan.

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 an area 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 an area 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. A WRIA planning unit may apply to the DOE for funding assistance for developing a water-resource plan for the WRIA. The DOE is to provide \$500,000 per WRIA for each planning unit applying in this manner from appropriations made expressly for this purpose. In general, the funding is to be provided on a first-come, first-served basis to the extent of the appropriations. However, preference is given to planning units conducting multi-WRIA planning. If a planning unit receives this funding, it must approve a plan for submittal to the counties within four years or the DOE must develop and adopt a plan for the WRIA or multi-WRIA area.

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 multipurpose 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.

Water Purveyors. 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. For an intertie to be used as a primary or secondary source of water supply or for the development of new sources to meet future demand, the receiving water systems must make efficient use of existing water supply and the provision of water must be consistent with local land use plans. A pre-1991 intertie may be used to its full design or built capacity within the most recently approved retail and/or wholesale service area.

If a public water system, federal reclamation project, or irrigation district is providing water under a certificated water right for its municipal, project, or district purposes, the instantaneous and annual withdrawal rates specified in the certificate are deemed

valid and perfected. If any of the provisions of the bill regarding the development, adoption, or effect of WRIA plans, or regarding the permit processing deadlines is vetoed, these provisions regarding interties and water purveyors' rights are null and void.

Relinquishment. A water right is not relinquished for nonuse if the right is claimed for a determined future development that takes place at any time within a 15-year period from the date of the most recent beneficial use of the right. A water right is not relinquished for nonuse if the nonuse is the result of water efficiency or the result of processing a transfer of a water right to use by a public water supplier for municipal purposes.

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. 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.

EFFECT OF SENATE AMENDMENT(S): WRIA PLANNING: General principles and criteria is established for providing input to the watershed planning process and for state agencies to share information. WRIA plans must be consistent with and not duplicate efforts already under way in the WRIA, including those under forest practices laws and rules. The bill cannot affect ongoing efforts to develop new resources and the sharing of existing resources. No moratorium may be imposed on the DOE's water resource decision-making solely because of ongoing planning efforts or the absence of a plan or planning effort. New planning units must recognize efforts already in progress.

Rather than receiving \$500,000 per WRIA upon application to DOE after a planning unit sets its priorities, a planning unit is to receive \$50,000 upon application after choosing a lead agency. The unit is to receive up to \$250,000 per WRIA in a two year period and a maximum of \$500,000 per WRIA, based on demonstrated need. Funding is not longer required to be provided on a first-come, first-served basis. In addition to the preference provided by the second substitute bill for funding multi-WRIA planning, preference is also to be provided for Endangered Species Act related responses and to addressing water availability to meet state 20-year population projections.

The waiver of liability provided by the second substitute bill for units of local government participating in WRIA planning is extended to Indian tribes participating in the planning.

The county that may initiate the planning process is the county with the largest area, not population, in the WRIA. A municipal corporation obtaining its water supply from a WRIA may also initiate the planning process. The county with the largest area in the WRIA is the lead agency for WRIA planning except in Pierce, King, or Snohomish counties, in which case it is the water purveyor using the largest amount of water from the WRIA. However, the counties in a WRIA may choose, with its consent, any governmental entity in the WRIA area as the lead agency for WRIA planning. The lead agency is to provide staff support from the resources provided under the bill.

In lieu of the planning unit membership specified by the second substitute bill, the counties in the WRIA may adopt the existing planning unit membership where water resource planning efforts have commenced before the effective date of the bill.

The planning unit membership specified by the bill is altered: the tribal government for each reservation in the WRIA is entitled to one representative; the representation of special interest groups in the WRIA is expanded to nine (from six) and three of these are now appointed by the cities; the three state agency representatives now share one vote; and the water utility representative does not represent the water utility of a city or town. The local governments of the planning unit may add up to two additional members representing interests not included in the planning unit. The cities now appoint one of the representatives of the general citizenry and the representative of the cities in the WRIA also represents incorporated towns in the WRIA. Of the two general citizen representatives with water rights, one must have a certificated right and one a pre-permit historical right. The length of residency required for members who must be residents of the WRIA under the second substitute bill is now three years (rather than five) and they must now also be property owners of the WRIA. In addition to those specifically representing the three state agencies, state employees other than those with water resource-related duties may now be planning unit members. Counties must attempt to provide for a balanced group of interests on the planning unit, with emphasis on local interests and concerns. All positions must be filled within 30 days of the convening of the planning unit. If a planning unit has found that attempts at achieving consensus have not been successful, decisions by two-thirds majority vote (rather than majority vote) may be used.

A WRIA plan may not conflict with state statute (rather than state law). Plans need no longer acknowledge that water rights of citizens are rights to real property. A WRIA plan cannot interfere with an instream flow requirement or condition established for a federally licensed hydroelectric power project. The plan must now estimate the quantity of precipitation available in a WRIA, the amounts of water used in months of peak and minimum use, and the amounts that may be obtained by reuse. The plan's provisions regarding storage are to include underground storage. The provisions of the second substitute bill limiting which WRIAs may set instream flows are replaced by provisions allowing instream flows to be set by a unanimous vote of

the planning unit and permitting a planning unit to recommend instream flows to the DOE by a two-thirds majority vote. These flows cannot conflict with flow requirements or conditions in effect under a license issued under the federal power act. A WRIA plan includes rules adopted in conjunction with it. Upon request, the DOE must assist the planning unit in drafting proposed implementing rules for the elements of the plan over which the DOE has authority. The draft rules are to accompany the plan. The requirement that a plan receive interim approval by majority vote before being submitted to the DOE is removed.

The DOE is no longer required to hold a hearing on a proposed plan during its review. The plan is also to be submitted to the tribal governments with reservations in the WRIA for review. Any comments of the tribal government are to be submitted to the planning unit within the same 60 days given the DOE. The provisions requiring the DOE to identify conflicts with state law now apply to conflicts with state statute. The planning unit must consider, but no longer must vote upon, each recommendation and advice provided by the DOE. If it adopts the recommendations of the DOE or the tribal governments following their review, the planning unit must do so by a two-thirds vote. One hearing, rather than two, must be conducted by the counties on a WRIA plan submitted to them. The superior court with which DOE is to file its petition regarding legal conflicts in a plan is the superior court of the county with the largest area (not population) in the WRIA. The DOE's general authority for developing a comprehensive water resources program and for developing the program in segments (as in basin planning) under the Water Resources Act are to be exercised in a manner that is consistent with these WRIA plans.

PERMIT PROCESSING: When considering water right applications or modifications or cancellations of water right permits, the DOE has no discretion to take an action except as is consistent with the surface and groundwater codes, a set of laws on minimum flows and levels, and the Water Resources Act of 1971. The deadlines established regarding the processing of an application for a water right apply to completed applications. The deadline for an application for water from a WRIA for which no WRIA plan has been adopted applies to applications filed after July 1, 1999.

NULL & VOID: All of the provisions of the bill regarding WRIA planning and establishing permit processing deadlines are null and void if any of the provisions of the bill are vetoed regarding interties; the water rights of municipalities, federal reclamation projects, and irrigation districts; and relinquishment of water rights.

STORAGE: The effects (rather than just the benefits) of storage are to be evaluated.

WATER-RELATED APPEALS: A party electing to appeal a water quantity decision may elect an informal or a formal hearing before the PCHB or may appeal directly to superior court. An informal hearing must be granted if requested by one of the parties.

An informal hearing consists of mediation and may include fact finding if a settlement agreement is not reached. A single member of the PCHB or an administrative law judge of the Environmental Hearings Office serves as mediator. If a settlement agreement is reached, the mediator forwards it to the PCHB, which dismisses the case unless the PCHB determines the agreement is contrary to law. If the proposed agreement is contrary to law, the PCHB refers the dispute back for further mediation. If a settlement agreement is not reached within 90 days after the mediator is appointed, the party filing the appeal may request the dispute be submitted for fact finding and recommendations.

The person who conducted the mediation may serve as the fact finder if all parties agree. At least seven days before the fact finding hearing, each party must submit written proposals of all issues he or she intends to submit to fact finding. After the fact finder has closed the hearing, the fact finder must issue written findings of fact and recommendations to the parties as to how the dispute should be resolved. The fact finder may not apply any presumption as part of the findings or recommendations. The findings and recommendations are advisory and not binding on the parties. Hearings must be held in the general area where the land is located upon which the water is used, and the time limits may be extended upon the consent of the parties.

After the fact finder has issued the findings and recommendations, any party may request a formal hearing by the PCHB or appeal the water quantity decision directly to superior court. All parties must agree to a formal hearing before the PCHB before one can be granted. An appeal of any water quantity decision by the Department of Ecology to superior court is heard de novo, but in an appeal after an informal hearing by the PCHB no party may raise an issue that was not raised and discussed as part of the fact finding hearing. The appeal to superior court is heard in the county where the land is located upon which the water is used.

A water quantity decision– is (1) a decision to grant or deny a permit or certificate for a right to the beneficial use of water, or to amend, change, or transfer the right; and (2) a decision to enforce the conditions of a permit for, or right to, the beneficial use of water or to require any person to discontinue the use of water.

Relinquishment actions are filed in superior court in which the land is located upon which the water is used instead of the PCHB.

Appropriation: None.

Fiscal Note: Requested on February 20, 1997.

Effective Date Ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Testimony For (original bill): (Agriculture & Ecology) (1) The people of the state have lost millions of dollars in drought damage and millions of dollars in flood damage. We need water planning. (2) Local planning efforts have begun in a number of watersheds. The recommendations of these groups can be given to the planning units created under the bill. (3) Part of the solution to the hydraulic continuity problems faced in the state is good watershed planning. (4) The bill's emphasis on locally conducted planning and local assessment of water availability, its financial support for local water planning, and the support it provides to the rights of water purveyors are the correct approach.

(Appropriations) (substitute bill) Local watershed planning is the key part of the bill. While the \$500,000 in planning assistance will be more than enough in some areas, for complex urban watersheds it will not be enough. In complex watersheds, additional support will come from local governments and private contributions. Funding will be used for studies, data collection, data management, and groundwater mapping as well as providing for a public process. It is important to support those entities that have already started planning. After plans are completed there will be a need for implementation funding.

The intertie provisions are consistent with previous legislative direction and the objectives of the Department of Health for water system planning.

Water quantity and water quality planning efforts should be integrated.

Testimony Against (original bill): (Agriculture & Ecology) (1) Tribal representation is needed on the local planning unit. The tribes should be treated as units of government, not simply part of the general citizenry. (2) Greater flexibility in determining who is at the planning table should be granted. If local entities cannot agree on the composition of a planning unit, the state-provided composition should then be used. (3) Instream flows should not be set locally. (4) Plans need to accommodate growth. (5) Anadromous fish runs are a statewide issue, not an issue to be settled locally. (6) The state must consider its obligations to tribal treaty rights and the role of tribes as co-managers of fish resources with the state. The bill is on a collision course with tribal rights, particularly with regard to instream flows. (7) The tribes should be consulted regarding water storage proposals made under the bill. (8) The bill transfers state policy-making to local government. (9) Voting should be used to make decisions only if attempts at reaching consensus fail. (10) The state should be more than an observer to the planning. All persons who wish to participate should be allowed to do so. (11) Financial assistance for the implementation of local plans is needed.

(Appropriations) (substitute bill) There are significant changes in the substitute bill; however, the issue needs more work. The \$500,000 is helpful but won't fund the completeness that is needed. Basin assessments must also be done.

Testified (original bill): (Agriculture & Ecology) Paul Parker, Washington State Association of Counties; Chuck Klarich, Tri County Water Resource Agency; Bob Mack, city of Tacoma and Bellevue Public Utilities Department; Doug Levy, city of Everett Public Utilities Department (in favor). John Kounts and Tony Minehardt, Washington Public Utility District Association; and Dave Williams, Association of Washington Cities (commented on the bill). Randy Scott, Quinault Indian Nation; Dawn Vyvyan, Yakima Indian Nation; Greg Stewart, Washington Rivers Council (opposed); and Bill Robinson, Trout Unlimited (commented on the bill).

(Appropriations) Bill Alkire, Department of Ecology (concerns); Kathleen Collins, Washington Water Policy Alliance; David Monthie, Department of Health; Paul Parker, Washington State Association of Counties (all pro); and Judy Turpin, Washington Environmental Council (con).