

ESHB 1622 - S COMM AMD

By Committee on Agriculture, Water, Natural Resources & Parks

ADOPTED 03/05/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 43.83B
4 RCW to read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Department" means the department of ecology.

8 (2) "Drought condition" means that the water supply for a
9 geographic area, or for a significant portion of a geographic area,
10 is below seventy-five percent of normal and the water shortage is
11 likely to create undue hardships for water users or the environment.

12 (3) "Normal" water supply, for the purpose of determining drought
13 conditions, means the median amount of water available to a
14 geographical area, relative to the most recent thirty-year base
15 period used to define climate normals.

16 **Sec. 2.** RCW 43.83B.400 and 1989 c 171 s 1 are each amended to
17 read as follows:

18 ~~((It is the intent of))~~ The legislature ~~((to provide emergency~~
19 ~~powers to the department of ecology to enable it to take actions, in~~
20 ~~a timely and expeditious manner, that are designed to alleviate~~
21 ~~hardships and reduce burdens on various water users and uses arising~~
22 ~~from drought conditions. As used in this chapter, "drought condition"~~
23 ~~means that the water supply for a geographical area or for a~~
24 ~~significant portion of a geographical area is below seventy-five~~
25 ~~percent of normal and the water shortage is likely to create undue~~
26 ~~hardships for various water uses and users.))~~ recognizes that drought
27 and water shortages can place a significant hardship on Washington
28 communities, farms, and the natural environment. Rising temperatures
29 due to climate change may cause water supply shortages to be more
30 frequent and severe in the future. Therefore, the ability to respond
31 to drought and water shortage emergencies is critical to the long-

1 term prosperity of our state. It is the intent of the legislature to
2 provide the department with the authority to effectively and
3 efficiently take actions when a drought emergency occurs to alleviate
4 hardship on water users and our natural environment.

5 The legislature also recognizes that effective emergency drought
6 response is predicated on building resiliency and preparedness before
7 water shortages occur. Therefore, it is also the intent of the
8 legislature that the department assist water users by supporting
9 measures to strengthen the resiliency and preparedness of water users
10 to drought conditions in the long term.

11 **Sec. 3.** RCW 43.83B.405 and 1989 c 171 s 2 are each amended to
12 read as follows:

13 (1) Whenever it appears to the department, based on the
14 definitions of drought condition and normal water supply set forth in
15 section 1 of this act, that drought conditions may develop, the
16 department may issue a drought advisory. The drought advisory should
17 seek to increase the awareness and readiness of affected water users
18 and may recommend voluntary actions to alleviate drought impacts.

19 (2)(a) Whenever it appears to the department ((of ecology)),
20 based on the definitions of drought condition and normal water supply
21 set forth in section 1 of this act, that a drought condition either
22 exists or is forecast to occur within the state or portions thereof,
23 the department ((of ecology)) is authorized to issue orders of
24 drought emergency, pursuant to adopted rules ((previously adopted)),
25 to implement the powers as set forth in RCW 43.83B.410 through
26 43.83B.420. ((The department shall, immediately upon the issuance of
27 an order under this section, cause said order to be published in
28 newspapers of general circulation in the areas of the state to which
29 the order relates.))

30 (b) Prior to the issuance of an order of drought emergency, the
31 department shall ((a)):

32 (i) Consult with ((and obtain the views of)) the federal and
33 state government entities identified in the drought contingency plan
34 periodically revised by the department pursuant to ((RCW
35 43.83B.410(4), and

36 ((b)) section 7 of this act and consult with affected federally
37 recognized tribes;

1 (ii) Consider input from local water users, including nursery and
2 landscape professionals, in the determination of undue hardship under
3 section 1(2) of this act; and

4 (iii) Obtain the written approval of the governor.

5 (c) Upon issuance of an order of drought emergency, the
6 department shall notify the public of the order consistent with rules
7 adopted by the department.

8 (d) Orders of drought emergency issued under ((this section)) (a)
9 of this subsection shall be deemed orders for the purposes of chapter
10 34.05 RCW.

11 (e) A person may petition the department to declare a drought
12 emergency for the state or portions of the state. The department may
13 review a petition, but any order of drought emergency issued after
14 receipt of a petition must be based on the definitions of drought
15 condition and normal water supply set forth in section 1 of this act,
16 and must be issued according to the procedure set forth in this
17 section. The department must not rely exclusively on information
18 presented in a petition when determining whether to issue an order of
19 drought emergency.

20 ~~((2))~~ (3)(a) Any order issued under subsection ~~((1))~~ (2) of
21 this section shall contain a termination date for the order. The
22 termination date shall be not later than one calendar year from the
23 date the order is issued. Although the department may, with the
24 written approval of the governor, change the termination date by
25 amending the order, no such amendment or series of amendments may
26 have the effect of extending its termination to a date which is later
27 than two calendar years after the issuance of the order.

28 ~~((3))~~ (b) The provisions of ~~((subsection (2) of))~~ this section
29 do not preclude the issuance of more than one order under subsection
30 ~~((1))~~ (2) of this section for different areas of the state, or
31 sequentially for the same area, as the need arises ~~((for such an~~
32 ~~order or orders))~~.

33 **Sec. 4.** RCW 43.83B.410 and 1989 c 171 s 3 are each amended to
34 read as follows:

35 Upon the issuance of an order of drought emergency under RCW
36 43.83B.405(2), the department ~~((of ecology is empowered to))~~ may:

37 (1)(a) Authorize emergency withdrawal of public surface and
38 ground waters, including dead storage within reservoirs, on a
39 temporary basis and authorize temporary or permanent associated

1 physical works (~~(which may be either temporary or permanent)~~). The
2 department shall prioritize the approval of emergency withdrawal
3 authorizations in order to address those most affected by the water
4 deficit to ensure the survival of irrigated crops, the state's
5 fisheries, and the provision of water for small communities.

6 (b) The termination date for (~~(the authority to make such an)~~)
7 emergency withdrawals may not be later than the termination date of
8 the order issued under RCW 43.83B.405(2) (~~(under which the power to~~
9 ~~authorize the withdrawal is established)~~).

10 (c) The department (~~(of ecology)~~) may issue (~~(such)~~) emergency
11 withdrawal authorizations only when, after investigation and after
12 providing appropriate federal, state, and local governmental bodies
13 and affected federally recognized tribes an opportunity to comment,
14 the following are found:

15 (i) The waters proposed for withdrawal are to be used for a
16 beneficial use involving a previously established activity or
17 purpose;

18 (ii) The previously established activity or purpose was furnished
19 water through rights applicable to the use of a public body of water
20 that cannot be exercised due to the lack of water arising from
21 natural drought conditions; and

22 (iii) The proposed withdrawal will not reduce flows or levels
23 below essential minimums necessary (~~((A))~~) to (~~(assure)~~) ensure the
24 maintenance of fisheries requirements(~~((r))~~) and (~~((B))~~) to protect
25 federal and state interests including, among others, power
26 generation, navigation, and existing water rights(~~((r))~~).

27 (~~((b))~~) (d) All emergency withdrawal authorizations issued under
28 this section shall contain provisions that allow for termination of
29 withdrawals, in whole or in part, whenever withdrawals will conflict
30 with flows and levels as provided in (~~((a))~~) (c)(iii) of this
31 subsection. (~~(Domestic and irrigation uses of public surface and~~
32 ~~ground waters shall be given priority in determining "beneficial~~
33 ~~uses."~~)

34 (e) As to water withdrawal and associated works authorized under
35 this subsection, the requirements of chapter 43.21C RCW and public
36 bidding requirements as otherwise provided by law are waived and
37 inapplicable. All state and local agencies with authority to issue
38 permits or other authorizations for such works shall, to the extent
39 possible, expedite the processing of the permits or authorizations in
40 keeping with the emergency nature of the requests and shall provide a

1 decision to the applicant within fifteen calendar days of the date of
2 application. All state departments or other agencies having
3 jurisdiction over state or other public lands, if such lands are
4 necessary to effectuate the withdrawal authorizations issued under
5 this subsection, shall provide short-term easements or other
6 appropriate property interest upon the payment of the fair market
7 value. This mandate shall not apply to any lands of the state that
8 are reserved for a special purpose or use that cannot properly be
9 carried out if the property interest were conveyed;

10 (2) Approve a temporary change in purpose, place of use, ~~((e))~~
11 point of diversion, or point of withdrawal, consistent with existing
12 state policy allowing transfer or lease of waters between willing
13 parties, as provided for in RCW 90.03.380, 90.03.390, and 90.44.100.
14 However, compliance with any requirements of ~~((a))~~ notice of
15 newspaper publication of these sections or ~~((b))~~ the state
16 environmental policy act ~~((c))~~ under chapter 43.21C RCW, is not
17 required when such changes are necessary to respond to drought
18 conditions as determined by the department ~~((of ecology))~~. An
19 approval of a temporary change of a water right as authorized under
20 this subsection is not admissible as evidence in either supporting or
21 contesting the validity of water claims in ~~((State of Washington,~~
22 ~~Department of Ecology v. Acquavella, Yakima county superior court~~
23 ~~number 77-2-01484-5))~~ a general adjudication under RCW 90.03.210 or
24 any similar proceeding where the existence of a water right is at
25 issue ~~((d))~~;

26 (3) Employ additional persons for specified terms of time,
27 consistent with the term of a drought condition, as are necessary to
28 ensure the successful performance of the activities associated with
29 implementing the emergency drought program of this chapter ~~((e))~~;

30 ~~((4) ((Revise the drought contingency plan previously developed by~~
31 ~~the department; and~~

32 ~~(5))~~ Acquire needed emergency drought-related equipment;

33 (5) Enter into agreements with applicants receiving emergency
34 withdrawal authorizations established under this section to recover
35 the costs, or a portion thereof, of mitigation for emergency
36 withdrawal authorizations, provided that mitigation is done to
37 protect instream flows, federally regulated flows, or senior water
38 rights. The department may establish the specifics of cost recovery
39 by rule, based on the amount of water used in the emergency
40 withdrawal, which shall not exceed the cost of mitigation; and

1 (6) Enter into interagency agreements as authorized under chapter
2 39.34 RCW to partner in emergency drought response.

3 **Sec. 5.** RCW 43.83B.415 and 1989 c 171 s 4 are each amended to
4 read as follows:

5 (1) ~~(a) The department ((of ecology is authorized to make loans,~~
6 ~~grants, or combinations of loans and grants from emergency~~
7 ~~agricultural water supply funds when necessary to provide water to~~
8 ~~alleviate emergency drought conditions in order to ensure the~~
9 ~~survival of irrigated crops and the state's fisheries. For the~~
10 ~~purposes of this section, "emergency agricultural water supply funds"~~
11 ~~means funds appropriated from the state emergency water projects~~
12 ~~revolving account created under RCW 43.83B.360. The department of~~
13 ~~ecology may make the loans, grants, or combinations of loans and~~
14 ~~grants as matching funds in any case where federal, local, or other~~
15 ~~funds have been made available on a matching basis. The department~~
16 ~~may make a loan of up to ninety percent of the total eligible project~~
17 ~~cost or combination loan and grant up to one hundred percent of the~~
18 ~~total single project cost. The grant portion for any single project~~
19 ~~shall not exceed twenty percent of the total project cost except~~
20 ~~that, for activities forecast to have fifty percent or less of normal~~
21 ~~seasonal water supply, the grant portion for any single project or~~
22 ~~entity shall not exceed forty percent of the total project cost. No~~
23 ~~single entity shall receive more than ten percent of the total~~
24 ~~emergency agricultural water supply funds available for drought~~
25 ~~relief. These funds shall not be used for nonagricultural drought~~
26 ~~relief purposes unless there are no other capital budget funds~~
27 ~~available for these purposes. In any biennium the total expenditures~~
28 ~~of emergency agricultural water supply funds for nonagricultural~~
29 ~~drought relief purposes may not exceed ten percent of the total of~~
30 ~~such funds available during that biennium.~~

31 ~~(2) (a) Except as provided in (b) of this subsection, after June~~
32 ~~30, 1989, emergency agricultural water supply funds, including the~~
33 ~~repayment of loans and any accrued interest, shall not be used for~~
34 ~~any purpose except during drought conditions as determined under RCW~~
35 ~~43.83B.400 and 43.83B.405.~~

36 ~~(b) Emergency agricultural water supply funds may be used on a~~
37 ~~one-time basis for the development of procedures to be used by state~~
38 ~~governmental entities to implement the state's drought contingency~~
39 ~~plan.)) is authorized to issue grants to eligible public entities to~~

1 reduce current or future hardship caused by water unavailability
2 stemming from drought conditions. No single entity may receive more
3 than twenty-five percent of the total funds available. The department
4 is not obligated to fund projects that do not provide sufficient
5 benefit to alleviating hardship caused by drought or water
6 unavailability. Projects must show substantial benefit from securing
7 water supply, availability, or reliability relative to project costs.

8 (b) Except for projects for public water systems serving
9 economically disadvantaged communities, the department may only fund
10 up to fifty percent of the total eligible cost of the project. Money
11 used by applicants as a cash match may not originate from other state
12 funds.

13 (c) For the purposes of this chapter, eligible public entities
14 include only:

- 15 (i) Counties, cities, and towns;
- 16 (ii) Water and sewer districts formed under chapter 57.02 RCW;
- 17 (iii) Public utility districts formed under chapter 54.04 RCW;
- 18 (iv) Port districts formed under chapter 53.04 RCW;
- 19 (v) Conservation districts formed under chapter 89.08 RCW;
- 20 (vi) Irrigation districts formed under chapter 87.03 RCW;
- 21 (vii) Watershed management partnerships formed under RCW
22 39.34.200; and
- 23 (viii) Federally recognized tribes.

24 (2) Grants may be used to develop projects that enhance the
25 ability of water users to effectively mitigate for the impacts of
26 water unavailability arising from drought. Project applicants must
27 demonstrate that the projects will increase their resiliency,
28 preparedness, or ability to withstand drought conditions when they
29 occur. Projects may include, but are not limited to:

- 30 (a) Creation of additional water storage;
- 31 (b) Implementation of source substitution projects;
- 32 (c) Development of alternative, backup, or emergency water
33 supplies or interties;
- 34 (d) Installation of infrastructure or creation of educational
35 programs that improve water conservation and efficiency or promote
36 use of reclaimed water;
- 37 (e) Development or update of local drought contingency plans if
38 not already required by state rules adopted under chapter 246-290
39 WAC;

1 (f) Mitigation of emergency withdrawals authorized under RCW
2 43.83B.410(1);

3 (g) Projects designed to mitigate for the impacts of water supply
4 shortages on fish and wildlife; and

5 (h) Emergency construction or modification of water recreational
6 facilities.

7 (3) During a drought emergency order pursuant to RCW
8 43.83B.405(2), the department shall prioritize funding for projects
9 designed to relieve the immediate hardship caused by water
10 unavailability.

11 **Sec. 6.** RCW 43.83B.430 and 2016 sp.s. c 36 s 933 are each
12 amended to read as follows:

13 The state drought preparedness and response account is created in
14 the state treasury. All receipts from appropriated funds designated
15 for the account and (~~funds transferred from the state emergency~~
16 ~~water projects revolving account~~) all cost recovery revenues
17 collected under RCW 43.83B.410(5) must be deposited into the account.
18 Expenditures from the account may be used for drought preparedness
19 and response activities under this chapter, including grants issued
20 under RCW 43.83B.415. Moneys in the account may be spent only after
21 appropriation. (~~Expenditures from the account may be used only for~~
22 ~~drought preparedness. During the 2009-2011 fiscal biennium, the~~
23 ~~legislature may transfer from the state drought preparedness account~~
24 ~~to the state general fund such amounts as reflect the excess fund~~
25 ~~balance of the account. For the 2015-2017 fiscal biennium, the~~
26 ~~account may also accept revenue collected from emergency drought~~
27 ~~well-related water service contracts and may be used for drought~~
28 ~~response.))~~)

29 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.83B
30 RCW to read as follows:

31 In collaboration with affected governments, the department may
32 revise the existing drought contingency plan. The department shall
33 notify interested parties of any updates to the drought contingency
34 plan.

35 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.83B
36 RCW to read as follows:

1 (1) The department shall initiate a pilot program in a selected
2 basin or basins to explore the cost, feasibility, and benefits of
3 entering into long-term water right lease agreements. The purpose of
4 the agreements is to alleviate water supply conditions that may
5 affect public health and safety, drinking water supplies,
6 agricultural activities, or fish and wildlife survival. Under this
7 program, the department is authorized to negotiate and enter into
8 contractual agreements before a drought emergency is declared under
9 RCW 43.83B.405(2) that identify projects, measures, sources of water,
10 and other resources that may be accessed during times of water
11 shortage. Water right changes executed under agreement under this
12 section are subject to the requirements of RCW 90.03.380.

13 (2) The department shall submit a report to the legislature by
14 December 31, 2024, on the results of the pilot program. The
15 department shall include a summary of the contracts entered into
16 pursuant to this section and recommendations to the legislature.

17 (3) This section expires June 30, 2025.

18 NEW SECTION. **Sec. 9.** The following sections are decodified:

19 (1) RCW 43.83B.005 (Transfer of duties to the department of
20 health);

21 (2) RCW 43.83B.200 (Deposit of proceeds from repayment of loans,
22 interest, gifts, grants, etc., in state and local improvements
23 revolving account-water supply facilities—Use);

24 (3) RCW 43.83B.210 (Loans or grants from department of ecology—
25 Authorized—Limitations);

26 (4) RCW 43.83B.300 (Legislative findings—General obligation bonds
27 authorized—Issuance, terms—Appropriation required);

28 (5) RCW 43.83B.345 (Rates of charges for water—Payment into bond
29 redemption fund—Grants and loans—Contracts);

30 (6) RCW 43.83B.360 (State emergency water projects revolving
31 account—Proceeds from sale of bonds);

32 (7) RCW 43.83B.380 (Appropriations to department of health—
33 Authorized projects—Conditions); and

34 (8) RCW 43.83B.385 (Appropriations to department of ecology—
35 Authorized projects—Findings).

36 NEW SECTION. **Sec. 10.** The following acts or parts of acts are
37 each repealed:

- 1 (1) RCW 43.83B.220 (Contractual agreements) and 2009 c 549 s
2 5159, 1989 c 11 s 17, & 1975 1st ex.s. c 295 s 5; and
3 (2) RCW 43.83B.336 (Civil penalties)."

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4 On page 1, line 1 of the title, after "response;" strike the
5 remainder of the title and insert "amending RCW 43.83B.400,
6 43.83B.405, 43.83B.410, 43.83B.415, and 43.83B.430; adding new
7 sections to chapter 43.83B RCW; decodifying RCW 43.83B.005,
8 43.83B.200, 43.83B.210, 43.83B.300, 43.83B.345, 43.83B.360,
9 43.83B.380, and 43.83B.385; repealing RCW 43.83B.220 and 43.83B.336;
10 and providing an expiration date."

EFFECT: Requires the Department of Ecology (Ecology) to base the decision to issue a drought emergency order in response to a petition on the definitions of drought condition and normal water supply and to follow established procedures when issuing a drought emergency order. Provides that Ecology must not rely exclusively on petitioner's information when making a determination to issue a drought emergency order. Adds a requirement that Ecology consider input from nursery and landscape professionals when Ecology considers input from local water users.

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