

By Senator Warnick

E2SHB 1836 - S COMM AMD

By Committee on Agriculture, Water & Rural Economic Development

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 RCW 43.83B.400
6 through 43.83B.420 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 geographical area, or for a significant portion of a geographical
10 area, is below seventy-five percent of normal and the water shortage
11 is likely to create undue hardships for various water uses and users.

12 (3) "Emergency agricultural water supply funds" means moneys
13 appropriated from the state emergency water projects revolving
14 account created under RCW 43.83B.360.

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

17 It is the intent of the legislature to provide emergency powers
18 to the department (~~(of ecology)~~) to enable it to take actions, in a
19 timely and expeditious manner, that are designed to alleviate
20 hardships and reduce burdens on various water users and uses arising
21 from drought conditions. (~~(As used in this chapter, "drought
22 condition" means that the water supply for a geographical area or for
23 a significant portion of a geographical area is below seventy-five
24 percent of normal and the water shortage is likely to create undue
25 hardships for various water uses and users.)~~)

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

28 (1)(a) Whenever it appears to the department (~~(of ecology)~~) that
29 a drought condition either exists or is forecast to occur within the
30 state or portions (~~(thereof)~~) of the state, the department (~~(of~~

1 ~~ecology~~) is authorized to issue orders, pursuant to rules previously
2 adopted, to implement the powers as set forth in RCW 43.83B.410
3 through 43.83B.420. (~~The department shall, immediately upon the~~
4 ~~issuance of an order under this section, cause said order to be~~
5 ~~published in newspapers of general circulation in the areas of the~~
6 ~~state to which the order relates.~~)

7 (b) Prior to the issuance of an order under this section, the
8 department (~~shall (a)~~) must:

9 (i) Consult with (~~and obtain the views of~~) federally recognized
10 tribes headquartered in any area of the state affected by an order,
11 and the federal and state (~~government~~) governmental entities
12 identified in the drought contingency plan periodically revised by
13 the department pursuant to RCW 43.83B.410(~~(4), and (b)~~) (2)(c);

14 (ii) Notify the joint legislative committee on water supply
15 during drought created in RCW 90.86.020; and

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

17 (c) Orders issued under this section shall be deemed orders for
18 the purposes of chapter 34.05 RCW and be published as appropriate by
19 the department in any area of the state affected by the order.

20 (2)(a) Any order issued under subsection (1) of this section
21 (~~shall~~) must contain a termination date for the order. The
22 termination date (~~shall be~~) may not be later than one calendar year
23 from the date the order is issued. Although the department may, with
24 the 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 this subsection (2) (~~of this~~
29 ~~section~~) do not preclude the issuance of more than one order under
30 subsection (1) of this section for different areas of the state or
31 sequentially for the same area as the need arises for such an order
32 or orders.

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

35 (1)(a) Upon the issuance of an order under RCW 43.83B.405, the
36 department (~~of ecology is empowered to~~

37 ~~(1)(a)~~) May authorize emergency withdrawal of public surface and
38 ground waters, including dead storage within reservoirs, on a

1 temporary basis and authorize (~~associated physical works which may~~
2 ~~be~~) either temporary or permanent associated physical works.

3 (b) The termination date for the authority to make (~~such~~) an
4 emergency withdrawal under this section may not be later than the
5 termination date of the order issued under RCW 43.83B.405 under which
6 the power to authorize the withdrawal is established.

7 (c) The department (~~of ecology~~) may issue (~~such~~) an emergency
8 withdrawal authorization only when, after investigation and after
9 providing appropriate federal, state, and local governmental bodies
10 an opportunity to comment, the following are found by the department:

11 (i) The waters proposed for withdrawal are to be used for a
12 beneficial use involving a previously established activity or
13 purpose;

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

18 (iii) The proposed withdrawal will not reduce flows or levels
19 below essential minimums necessary (~~(A)~~) to (~~assure~~) ensure the
20 maintenance of fisheries requirements(~~(7)~~) and (~~(B)~~) to protect
21 federal and state interests including, among others, power
22 generation, navigation, irrigated crops, and existing water rights(~~(7~~
23 ~~b))~~).

24 (d) All emergency withdrawal authorizations issued under this
25 section shall contain provisions that allow for termination of
26 withdrawals, in whole or in part, whenever withdrawals will conflict
27 with flows and levels as provided in (~~(a)~~) (c)(iii) of this
28 subsection.

29 (e) Domestic and irrigation uses of public surface and ground
30 waters shall be given priority in determining "beneficial uses."

31 (f)(i) As to water withdrawal and associated works authorized
32 under this subsection, the requirements of chapter 43.21C RCW and
33 public bidding requirements as otherwise provided by law are waived
34 and inapplicable.

35 (ii) All state and local agencies with authority to issue permits
36 or other authorizations for (~~such~~) associated works shall, to the
37 extent possible, expedite the processing of the permits or
38 authorizations in keeping with the emergency nature of the requests
39 and shall provide a decision to the applicant within fifteen calendar
40 days of the date of application.

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

9 (2) The department may also, upon the issuance of an order under
10 RCW 43.83B.405:

11 (a)(i) Approve a temporary change in purpose, place of use, or
12 point of diversion, consistent with existing state policy allowing
13 transfer or lease of waters between willing parties, as provided for
14 in RCW 90.03.380, 90.03.390, and 90.44.100. However, compliance with
15 any requirements of ~~((+a))~~ notice of newspaper publication of these
16 sections or ~~((+b))~~ the state environmental policy act, chapter
17 43.21C RCW, is not required when such changes are necessary to
18 respond to drought conditions as determined by the department ~~((of~~
19 ~~ecology))~~.

20 (ii) An approval of a temporary change of a water right as
21 authorized under this subsection is not admissible as evidence in
22 either supporting or contesting the validity of water claims in *State*
23 *of Washington, Department of Ecology v. Acquavella*, Yakima county
24 superior court number 77-2-01484-5 or any similar proceeding where
25 the existence of a water right is at issue.

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

31 ~~((+4))~~ (c) Revise the drought contingency plan previously
32 developed by the department~~((+and))~~.

33 ~~((+5))~~ (d) Acquire needed emergency drought-related equipment.

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

36 (1)(a) The department ~~((of—ecology))~~ is authorized to make loans,
37 grants, or combinations of loans and grants, from emergency
38 agricultural water supply funds when necessary to provide water to
39 alleviate emergency drought conditions in order to ensure the

1 survival of irrigated crops and the state's fisheries. (~~For the~~
2 ~~purposes of this section, "emergency agricultural water supply funds"~~
3 ~~means funds appropriated from the state emergency water projects~~
4 ~~revolving account created under RCW 43.83B.360.~~)

5 (b) The department (~~of ecology~~) may make the loans, grants, or
6 combinations of loans and grants, as matching funds in any case where
7 federal, local, or other funds have been made available on a matching
8 basis. The department may make a loan of up to ninety percent of the
9 total eligible project cost or combination loan and grant up to one
10 hundred percent of the total single project cost. The grant portion
11 for any single project shall not exceed twenty percent of the total
12 project cost except that, for activities forecast to have fifty
13 percent or less of normal seasonal water supply, the grant portion
14 for any single project or entity shall not exceed forty percent of
15 the total project cost.

16 (c) No single entity shall receive more than ten percent of the
17 total emergency agricultural water supply funds available for drought
18 relief.

19 (~~These funds shall~~) (d) Emergency agricultural water supply
20 funds available for drought relief may not be used for
21 nonagricultural drought relief purposes unless there are no other
22 capital budget funds available for these purposes. In any biennium
23 the total expenditures of emergency agricultural water supply funds
24 for nonagricultural drought relief purposes may not exceed ten
25 percent of the total of such funds available during that biennium.

26 (2)(a) Except as provided in (b) of this subsection, (~~after June~~
27 ~~30, 1989,~~) emergency agricultural water supply funds, including the
28 repayment of loans and any accrued interest, shall not be used for
29 any purpose except during drought conditions as determined under RCW
30 43.83B.400 and 43.83B.405.

31 (b) Emergency agricultural water supply funds may be used on a
32 one-time basis for the development of procedures to be used by state
33 governmental entities to implement the state's drought contingency
34 plan.

35 **Sec. 6.** RCW 43.83B.360 and 2009 c 564 s 938 are each amended to
36 read as follows:

37 The proceeds from the sale of bonds authorized by RCW
38 43.83B.300(~~(7)~~) and 43.83B.355 through 43.83B.375 shall be deposited
39 in the state emergency water projects revolving account, hereby

1 created in the state treasury, and shall be used exclusively for the
2 purposes specified in RCW 43.83B.300, ~~((and))~~ 43.83B.355 through
3 43.83B.375, and 43.83B.415 and for the payment of expenses incurred
4 in the issuance and sale of such bonds. ~~((During the 2009-2011 fiscal
5 biennium, the legislature may transfer from the state emergency water
6 projects revolving account to the state general fund such amounts as
7 reflect the excess fund balance of the account.))~~

8 **Sec. 7.** RCW 43.83B.430 and 2011 c 5 s 911 are each amended to
9 read as follows:

10 (1) The state drought preparedness account is created in the
11 state treasury. All receipts from appropriated funds designated for
12 the account and funds transferred from the state emergency water
13 projects revolving account must be deposited into the account. Moneys
14 in the account may be spent only after appropriation. Expenditures
15 from the account may be used only for drought preparedness and as
16 provided in RCW 43.83B.415. ~~((During the 2009-2011 fiscal biennium,~~
17 the legislature may transfer from the state drought preparedness
18 account to the state general fund such amounts as reflect the excess
19 fund balance of the account.))

20 (2) As part of drought preparedness, moneys in the account may be
21 used for the negotiation of agreements or contracts before a drought
22 is declared that identifies projects, measures, sources of water, and
23 other resources that can be accessed during a drought to alleviate
24 drought conditions that may affect public health and safety, drinking
25 water supplies, agricultural activities, or fish and wildlife
26 survival.

27 **Sec. 8.** RCW 90.86.020 and 2005 c 60 s 2 are each amended to read
28 as follows:

29 (1) The joint legislative committee on water supply during
30 drought is created.

31 (2) The committee shall consist of ~~((four senators and four~~
32 representatives who shall be selected biennially as follows:

33 (1) The president of the senate shall appoint four members from
34 the senate to serve on the committee, including the chair of the
35 committee responsible for water resource issues. Two members from
36 each major political party must be appointed.

37 (2) The speaker of the house of representatives shall appoint
38 four members from the house of representatives to serve on the

1 ~~committee, including the chair of the committee responsible for water~~
2 ~~resource issues. Two members from each major political party must be~~
3 ~~appointed.~~

4 ~~(3) The committee shall elect a chair and a vice chair. The chair~~
5 ~~shall be a member of the house of representatives in even-numbered~~
6 ~~years and a member of the senate in odd-numbered years.~~

7 ~~(4) The presiding officer of the appropriate legislative chamber~~
8 ~~shall fill any vacancies occurring on the committee by appointment~~
9 ~~from the same political party as the departing member.~~

10 ~~(5) Members shall serve until their successors are appointed as~~
11 ~~provided in this section, or until they are no longer members of the~~
12 ~~legislature, whichever is sooner)) eight legislators who shall be~~
13 ~~selected biennially as follows:~~

14 ~~(a) The president of the senate shall appoint two members from~~
15 ~~each of the two largest caucuses of the senate.~~

16 ~~(b) The speaker of the house of representatives shall appoint two~~
17 ~~members from each of the two largest caucuses of the house of~~
18 ~~representatives.~~

19 ~~(c) In making appointments to the committee, the speaker of the~~
20 ~~house of representatives and the president of the senate must provide~~
21 ~~the chairs of the committees with jurisdiction over water resources~~
22 ~~with the opportunity to serve on the committee as one of the two~~
23 ~~respective caucus appointments.~~

24 ~~(d) The speaker of the house of representatives or the president~~
25 ~~of the senate must fill any vacancies occurring on the committee by~~
26 ~~appointment from the same caucus as the departing member.~~

27 ~~(3) The committee shall select a chair and a vice chair from~~
28 ~~among its membership. However, the chair must be a member of the~~
29 ~~house of representatives in even-numbered years and a member of the~~
30 ~~senate in odd-numbered years.~~

31 ~~(4) Members of the committee shall serve until one of the~~
32 ~~following events occurs:~~

33 ~~(a) A successor is appointed as provided in this section; or~~

34 ~~(b) The member of the committee discontinues service in the~~
35 ~~legislative chamber from which the member was appointed.~~

36 **Sec. 9.** RCW 90.86.030 and 2010 1st sp.s. c 7 s 122 are each
37 amended to read as follows:

38 (1) The joint legislative committee on water supply during
39 drought shall convene from time to time at the call of the chair, or

1 if no chair is currently designated, by a majority of committee
2 members. The committee may convene under the following circumstances:

3 (a) When a drought conditions order under RCW 43.83B.405 is in
4 effect(~~(, or)~~);

5 (b) When the chair determines(~~(, in consultation with the~~
6 ~~department of ecology,~~) that it is likely that ((such an)) a drought
7 conditions order will be issued within the next year; or

8 (c) When the chair determines that a drought is anticipated and
9 state drought preparedness planning, including the building of
10 legislative institutional knowledge of the topic and the receipt of
11 information under subsection (2) of this section, would benefit from
12 the convening of the committee.

13 (2)(a) The committee may:

14 (i) Request and review information relating to water supply
15 conditions in the state, (~~and~~) economic, environmental, and other
16 impacts relating to decreased water supply being experienced or
17 anticipated;

18 (ii) Receive ongoing information from the department of ecology
19 related to water supply conditions prior to a drought declaration and
20 in years when a drought is not anticipated;

21 (iii) Provide recommendations and advice to drought response
22 entities; and

23 (iv) Coordinate with drought response entities in processing
24 lessons learned from drought response activities, including years
25 when a drought is declared and years when the decision is made to not
26 declare a drought, and improve efforts to preemptively mitigate the
27 impacts of a drought.

28 (b) The ((governor's)) executive water emergency committee
29 identified in WAC 173-166-030 as it existed on the effective date of
30 this section, the department of ecology, and other state agencies
31 with water management or related responsibilities shall cooperate in
32 responding to requests from the committee.

33 (3)(a) During drought conditions in which an order issued under
34 RCW 43.83B.405 is in effect, the department of ecology shall provide
35 to the committee no less than monthly a report describing drought
36 response activities of the department and other state and federal
37 agencies participating on the water supply availability committee
38 identified in WAC 173-166-030 as it existed on the effective date of
39 this section.

1 **(b)** The report ((shall)) from the department of ecology must
2 include information regarding applications for, and approvals and
3 denials of, emergency water withdrawals and temporary changes or
4 transfers of, water rights under RCW 43.83B.410 and other information
5 requested by the committee.

6 **(4)** When a drought declaration is not in effect, the department
7 of ecology shall provide to the committee, by January 15th of each
8 year, an assessment of predicted water supply for the coming year,
9 along with, if necessary, updates to the prediction during the first
10 half of the calendar year. This information may be provided in
11 written or electronic form if the committee has no official plans to
12 convene a meeting. The department of ecology may provide written or
13 electronic submissions to the staff of the committee identified in
14 section 10 of this act.

15 **(5)** The committee ((from time to time shall)) may, if deemed
16 appropriate by a majority of the committee, make recommendations to
17 the appropriate committee of the senate and house of representatives
18 on budgetary and legislative actions that will improve the state's
19 drought response programs and planning.

20 NEW SECTION. Sec. 10. A new section is added to chapter 90.86
21 RCW to read as follows:

22 Staff support for the joint legislative committee on water supply
23 during drought shall be provided by the house of representatives
24 office of program research and senate committee services.

25 NEW SECTION. Sec. 11. A new section is added to chapter 90.86
26 RCW to read as follows:

27 **(1)** The members of the joint legislative committee on water
28 supply during drought shall serve without additional compensation,
29 but must be reimbursed for travel expenses in accordance with RCW
30 44.04.120 while attending meetings of the joint legislative committee
31 on water supply during drought.

32 **(2)** The expenses of the joint legislative committee on water
33 supply during drought must be paid jointly by the senate and the
34 house of representatives. Committee expenditures are subject to
35 approval by the senate facilities and operations committee and the
36 house of representatives executive rules committee, or their
37 successor committees.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 43.21C
2 RCW to read as follows:

3 Emergency water withdrawals and associated physical works, and
4 temporary changes in purpose, place of use, or point of diversion for
5 a water right are exempt from the provisions of this chapter if
6 authorized by the department of ecology under RCW 43.83B.410.

7 **Sec. 13.** RCW 90.03.280 and 1994 c 264 s 83 are each amended to
8 read as follows:

9 (~~Upon receipt of a proper application, the department shall~~
10 ~~instruct the applicant to publish notice thereof~~) Except for
11 temporary changes in purpose, place of use, or point of diversion
12 consistent with the finding of a drought condition under RCW
13 43.83B.410, the department shall, upon receipt of a proper
14 application, instruct the applicant to publish notice of application
15 in a form and within a time prescribed by the department in a
16 newspaper of general circulation published in the county or counties
17 in which the storage, diversion, and use is to be made, and in such
18 other newspapers as the department may direct, once a week for two
19 consecutive weeks. Upon receipt by the department of an application
20 it shall send notice (~~thereof~~) of the application containing
21 pertinent information to the director of the department of fish and
22 wildlife.

23 NEW SECTION. **Sec. 14.** The following acts or parts of acts are
24 each repealed:

25 (1) RCW 90.86.010 (Joint legislative committee on water supply
26 during drought) and 2005 c 60 s 1; and

27 (2) RCW 90.86.900 (Effective date—2005 c 60) and 2005 c 60 s 5.

28 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of
30 the state government and its existing public institutions, and takes
31 effect immediately."

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1 On page 1, line 1 of the title, after "preparedness;" strike the
2 remainder of the title and insert "amending RCW 43.83B.400,
3 43.83B.405, 43.83B.410, 43.83B.415, 43.83B.360, 43.83B.430,
4 90.86.020, 90.86.030, and 90.03.280; adding a new section to chapter
5 43.83B RCW; adding new sections to chapter 90.86 RCW; adding a new
6 section to chapter 43.21C RCW; repealing RCW 90.86.010 and 90.86.900;
7 and declaring an emergency."

EFFECT: Removes requirement to obtain the views of federally recognized tribes while retaining the department of ecology's (DOE) mandatory consultation with the tribes before entering the administrative orders implementing drought powers.

Removes the requirement that DOE include other than anadromous or commercial fish species when it makes the necessary finding under existing law that a proposed emergency withdrawal will not reduce flows below those necessary for maintaining fisheries requirements, before issuing an emergency withdrawal authorization.

Removes flooding and other impacts of increased volatility of the water cycle from the joint legislative committee on water supply during drought's purview.

Adds the requirement that an emergency withdrawal not reduce flows or levels below essential minimums necessary to ensure maintenance of irrigated crops.

Before convening the joint drought committee, the chair must determine that a drought is anticipated in addition to the chair's determination that state drought preparedness planning would benefit from convening the committee.

Removes the following from the joint drought committee's authority: Providing policy oversight for the use of moneys in, and developing budget requests for, the state drought preparedness account.

Editorial, nonsubstantive changes.

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