

## CHAPTER 171

[Substitute Senate Bill No. 5196]

## DROUGHT RELIEF—DEPARTMENT OF ECOLOGY—EMERGENCY POWERS

AN ACT Relating to emergency drought relief; amending RCW 43.83B.210, 75.20.150, 86.16.180, 90.54.022, and 90.58.370; adding new sections to chapter 43.83B RCW; repealing RCW 43.83B.305, 43.83B.310, 43.83B.315, 43.83B.320, 43.83B.325, 43.83B.330, 43.83B.340, 43.83B.342, and 43.83B.344; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. It is the intent of the legislature to provide emergency powers to the department of ecology to enable it to take actions, in a timely and expeditious manner, that are designed to alleviate hardships and reduce burdens on various water users and uses arising from drought conditions. As used in this chapter, "drought condition" means that the water supply for a geographical area or for a significant portion of a geographical area is below seventy-five percent of normal and the water shortage is likely to create undue hardships for various water uses and users.

**NEW SECTION.** Sec. 2. (1) Whenever it appears to the department of ecology that a drought condition either exists or is forecast to occur within the state or portions thereof, the department of ecology is authorized to issue orders, pursuant to rules previously adopted, to implement the powers as set forth in sections 3 through 5 of this act. The department shall, immediately upon the issuance of an order under this section, cause said order to be published in newspapers of general circulation in the areas of the state to which the order relates. Prior to the issuance of an order, the department shall (a) consult with and obtain the views of the federal and state government entities identified in the drought contingency plan periodically revised by the department pursuant to section 3(4) of this act, and (b) obtain the written approval of the governor. Orders issued under this section shall be deemed orders for the purposes of chapter 34.05 RCW.

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

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

**NEW SECTION.** Sec. 3. Upon the issuance of an order under section 2 of this act, the department of ecology is empowered to:

(1)(a) Authorize emergency withdrawal of public surface and ground waters, including dead storage within reservoirs, on a temporary basis and authorize associated physical works which may be either temporary or permanent. The termination date for the authority to make such an emergency withdrawal may not be later than the termination date of the order issued under section 2 of this act under which the power to authorize the withdrawal is established. The department of ecology may issue such withdrawal authorization when, after investigation and after providing appropriate federal, state, and local governmental bodies an opportunity to comment, the following are found:

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

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

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

(b) All withdrawal authorizations issued under this section shall contain provisions that allow for termination of withdrawals, in whole or in part, whenever withdrawals will conflict with flows and levels as provided in (a)(iii) of this subsection. Domestic and irrigation uses of public surface and ground waters shall be given priority in determining "beneficial uses." As to water withdrawal and associated works authorized under this subsection, the requirements of chapter 43.21C RCW and public bidding requirements as otherwise provided by law are waived and inapplicable. All state and local agencies with authority to issue permits or other authorizations for such works shall, to the extent possible, expedite the processing of the permits or authorizations in keeping with the emergency nature of the requests and shall provide a decision to the applicant within fifteen calendar days of the date of application. All state departments or other agencies having jurisdiction over state or other public lands, if such lands are necessary to effectuate the withdrawal authorizations issued under this subsection, shall provide short-term easements or other appropriate property interest upon the payment of the fair market value. This mandate shall not apply to any lands of the state that are reserved for a special purpose or use that cannot properly be carried out if the property interest were conveyed;

(2) Approve a temporary change in purpose, place of use, or point of diversion, consistent with existing state policy allowing transfer or lease of waters between willing parties, as provided for in RCW 90.03.380, 90.03.390, and 90.44.100. However, compliance with any requirements of (a)

notice of newspaper publication of these sections or (b) the state environmental policy act, chapter 43.21C RCW, is not required when such changes are necessary to respond to drought conditions as determined by the department of ecology. An approval of a temporary change of a water right as authorized under this subsection is not admissible as evidence in either supporting or contesting the validity of water claims in STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY V. ACQUAVELLA, Yakima county superior court number 77-2-01484-5 or any similar proceeding where the existence of a water right is at issue.

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

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

(5) Acquire needed emergency drought-related equipment.

NEW SECTION. Sec. 4. (1) The department of ecology is authorized to make loans, grants, or combinations of loans and grants from emergency agricultural water supply funds when necessary to provide water to alleviate emergency drought conditions in order to ensure the survival of irrigated crops and the state's fisheries. For the purposes of this section, "emergency agricultural water supply funds" means funds appropriated from the state emergency water projects revolving account created under RCW 43.83B-.360. The department of ecology may make the loans, grants, or combinations of loans and grants as matching funds in any case where federal, local, or other funds have been made available on a matching basis. The department may make a loan of up to ninety percent of the total eligible project cost or combination loan and grant up to one hundred percent of the total single project cost. The grant portion for any single project shall not exceed twenty percent of the total project cost except that, for activities forecast to have fifty percent or less of normal seasonal water supply, the grant portion for any single project or entity shall not exceed forty percent of the total project cost. No single entity shall receive more than ten percent of the total emergency agricultural water supply funds available for drought relief. These funds shall not be used for nonagricultural drought relief purposes unless there are no other capital budget funds available for these purposes. In any biennium the total expenditures of emergency agricultural water supply funds for nonagricultural drought relief purposes may not exceed ten percent of the total of such funds available during that biennium.

(2)(a) Except as provided in (b) of this subsection, after June 30, 1989, emergency agricultural water supply funds, including the repayment of loans and any accrued interest, shall not be used for any purpose except during drought conditions as determined under sections 1 and 2 of this act.

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

NEW SECTION. Sec. 5. The department shall adopt such rules as are necessary to ensure the successful implementation of this chapter.

NEW SECTION. Sec. 6. Nothing in this chapter shall:

- (1) Authorize any interference whatsoever with existing water rights;
- (2) Authorize the establishment of rights to withdrawal of waters of a permanent nature or of rights with any priority;
- (3) Authorize the establishment of a water right under RCW 90.03-.250 or 90.44.060;
- (4) Preclude any person from filing an application pursuant to RCW 90.03.250 or 90.44.060.

Sec. 7. Section 3, chapter 295, Laws of 1975 1st ex. sess. as last amended by section 1, chapter 46, Laws of 1988 and RCW 43.83B.210 are each amended to read as follows:

The department of ecology is authorized to make loans or grants or combinations thereof ~~((;-+))~~ from funds under RCW 43.83B.010 through 43.83B.110 to eligible public bodies as defined in RCW 43.83B.050 for rehabilitation or betterment of agricultural water supply facilities, and/or construction of agricultural water supply facilities required to develop new irrigated lands ~~((;- or (2) from emergency agricultural water supply funds under RCW 43.83B.300 when required to provide water to alleviate emergency drought conditions to assure the survival of irrigated crops and the state's fisheries))~~. The department of ecology may make such loans or grants or combinations thereof as matching funds in any case where federal, local, or other funds have been made available on a matching basis. A loan or combination loan and grant shall not exceed fifty percent of the approved eligible project cost ~~((s))~~ for any single proposed project ~~((;- PROVIDED; That for purposes authorized by RCW 43.83B.300, 43.83B.310, and 43-.83B.385 the department of ecology may make a loan up to ninety percent of the total eligible project cost or combination loan and grant up to one hundred percent of the total single project cost and the grant portion for any single project shall not exceed twenty percent of the total project cost except that, for activities forecast to have fifty percent or less of normal seasonal water supplies, the grant portion for any single project or entity shall not exceed forty percent of the total project cost. No single entity shall receive more than ten percent of the total funds available for drought relief. These funds shall not be used for nonagricultural drought relief purposes unless there are no other capital budget funds available for these purposes. The total expenditures for nonagricultural drought relief purposes shall not exceed ten percent of the total funds available for drought relief purposes on March 15, 1988))~~. Any grant or grant portion of a combination loan and

grant from funds under RCW 43.83B.010 through 43.83B.110 for any single proposed project shall not exceed fifteen percent of the eligible project costs: PROVIDED, That the fifteen percent limitation established herein shall not be applicable to project commitments which the director or deputy director of the state department of ecology made to the bureau of reclamation of the United States department of interior for providing state funding at thirty-five percent of project costs during the period between August 1, 1974, and June 30, 1975.

~~((The department of social and health services is authorized to make grants of up to forty percent of the cost of construction of any eligible project necessitated by the 1977 drought conditions. Such grants may be made only to public bodies as defined in RCW 43.83B.050 for municipal and industrial water supply and distribution facilities.))~~

Sec. 8. Section 6, chapter 343, Laws of 1987 and RCW 75.20.150 are each amended to read as follows:

All state and local agencies with authority under this chapter to issue permits or other authorizations ~~((for))~~ in connection with emergency water withdrawals and facilities ~~((pursuant to RCW 43.83B.300 through 43.83B-345))~~ authorized under section 3 of this 1989 act shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

Sec. 9. Section 7, chapter 343, Laws of 1987 and RCW 86.16.180 are each amended to read as follows:

All state and local agencies with authority under this chapter to issue permits or other authorizations ~~((for))~~ in connection with emergency water withdrawals and facilities ~~((pursuant to RCW 43.83B.300 through 43.83B-345))~~ authorized under section 3 of this 1989 act shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

Sec. 10. Section 2, chapter 47, Laws of 1988 and RCW 90.54.022 are each amended to read as follows:

(1) The director of ecology shall contract with an independent fact-finding service for the purpose of consulting with all user groups and parties interested in Washington's water resource policy, including but not limited to:

- (a) The departments of ecology, agriculture, social and health services, fisheries, wildlife, and natural resources;
- (b) Municipal users of water;
- (c) Agricultural interests;
- (d) The governor's office;
- (e) Environmental interests;

- (f) Interests of industrial users of water;
- (g) Indian tribes;
- (h) Interests of public water utilities;
- (i) Interests of recreational uses other than fishing;
- (j) Public and private hydropower generating utilities;
- (k) Interests of sport and commercial fishing; and
- (l) Interests of the forest products industry.

(2) The fact-finding service shall consult with, obtain, and document the opinions of the interested parties, and may facilitate discussions between them on the fundamentals of water resource policy and the need, if any, to change or clarify the current policy for the state. The fact-finding service shall also identify and evaluate the clarity and consistency of state water allocation laws with the current policy based on those laws.

(3) The fact-finding service shall report its findings in a written report to the joint select committee established pursuant to RCW 90.54.024. The report shall be submitted to the joint select committee by June 30, 1988, unless the committee provides for an extension of the due date.

(4) The fact-finding service and the joint select committee shall consider the reports and recommendations of state and federal studies pertaining to allocation, augmentation, conservation, and efficient use of the water resources of this state, including but not limited to the department of ecology's instream resources and water allocation program review. By considering these studies, the fact-finding service and the joint select committee shall not duplicate the work already completed in such studies.

(5) Until July 1, 1989, or until the legislature has passed legislation based on recommendations from the joint select committee, whichever comes first, the department of ecology:

(a) Shall not amend or alter the current guidelines, standards, or criteria governing the instream flow and water allocation elements of the state water resources program established pursuant to chapters 90.22 and 90.54 RCW and set forth in chapters 173-500 to 173-596 WAC;

(b) Shall not adopt any water reservation under RCW 90.54.050, set forth in chapters 173-500 to 173-596 WAC, or the preferred alternative in the instream resources and water allocation environmental impact statement; and

(c) For any new application for surface water received under chapter 90.03 RCW after March 15, 1988, shall not issue any permanent appropriation permits and may only issue new temporary appropriation permits on streams by utilizing (i) the existing minimum or base flows adopted pursuant to chapters 90.54 and 90.22 RCW or (ii) the case-by-case process to maintain food fish and game fish populations as provided in RCW 75.20-.050. These water appropriations shall not reduce flows necessary to provide for preservation of wildlife, fish, scenic, aesthetic, recreational, water quality, other environmental values, and navigational values, as provided in

RCW 90.54.020 and chapters 90.03 and 90.22 RCW. These temporary permits shall be conditioned so that the appropriation may be altered based upon the enactment of legislation or adoption of regulations resulting from recommendations made pursuant to RCW 90.54.024 (3) and (4).

This subsection does not apply to any emergency water permits or transfers authorized under ~~((RCW 43.83B.300 through 43.83B.344))~~ section 3 of this 1989 act, and shall not affect any existing water rights established pursuant to law.

(6) The department of ecology shall provide staff support in the fact-finding process.

(7) This section shall expire on June 30, 1989.

Sec. 11. Section 5, chapter 343, Laws of 1987 and RCW 90.58.370 are each amended to read as follows:

All state and local agencies with authority under this chapter to issue permits or other authorizations ~~((for))~~ in connection with emergency water withdrawals and facilities ~~((pursuant to RCW 43.83B.300 through 43.83B.345))~~ authorized under section 3 of this 1989 act shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

NEW SECTION. Sec. 12. The following acts or parts of acts are each repealed:

- (1) Section 2, chapter 1, Laws of 1977 ex. sess. and RCW 43.83B.305;
- (2) Section 3, chapter 1, Laws of 1977 ex. sess., section 2, chapter 343, Laws of 1987, section 3, chapter 46, Laws of 1988 and RCW 43.83B.310;
- (3) Section 4, chapter 1, Laws of 1977 ex. sess. and RCW 43.83B.315;
- (4) Section 5, chapter 1, Laws of 1977 ex. sess., section 3, chapter 343, Laws of 1987, section 11, chapter 523, Laws of 1987 and RCW 43.83B.320;
- (5) Section 6, chapter 1, Laws of 1977 ex. sess. and RCW 43.83B.325;
- (6) Section 7, chapter 1, Laws of 1977 ex. sess. and RCW 43.83B.330;
- (7) Section 9, chapter 1, Laws of 1977 ex. sess. and RCW 43.83B.340;
- (8) Section 8, chapter 343, Laws of 1987, section 4, chapter 46, Laws of 1988 and RCW 43.83B.342; and
- (9) Section 9, chapter 343, Laws of 1987, section 5, chapter 46, Laws of 1988 and RCW 43.83B.344.

NEW SECTION. Sec. 13. Sections 1 through 6 of this act are each added to chapter 43.83B RCW.

NEW SECTION. Sec. 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION.** Sec. 15. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 17, 1989.

Passed the House April 10, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

## CHAPTER 172

[Substitute Senate Bill No. 5348]

### COMMERCIAL BOTTOM TRAWLING—HOOD CANAL AND PUGET SOUND— PARTIAL PROHIBITION

AN ACT Relating to the regulation of fishing; and adding a new section to chapter 75.12 RCW.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. A new section is added to chapter 75.12 RCW to read as follows:

Commercial bottom trawling for food fish and shellfish is unlawful in all areas of Hood Canal south of a line projected from Tala Point to Foul-weather Bluff and in Puget Sound south of a line projected from Foul-weather Bluff to Double Bluff and including all marine waters east of Whidbey Island and Camano Island.

Passed the Senate March 8, 1989.

Passed the House April 13, 1989.

Approved by the Governor April 27, 1989.

Filed in Office of Secretary of State April 27, 1989.

## CHAPTER 173

[House Bill No. 1077]

### CURB RAMPS—CONSTRUCTION REQUIREMENTS—HANDICAPPED ACCESS

AN ACT Relating to curb ramps for handicapped persons; and amending RCW 35.68.075.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 83, Laws of 1973 as amended by section 1, chapter 137, Laws of 1977 ex. sess. and RCW 35.68.075 are each amended to read as follows:

(1) The standard for construction ~~((of curbs))~~ on any county road, or city(;) or town street, ~~((or any connecting street or town road))~~ for which curbs ~~((and sidewalks have been prescribed by the governing body of the county, town, or city having jurisdiction thereover))~~ in combination with