

MEMO

Date: May 7, 2018

To: WPUDA Members

From: John Kounts, Water Program Director

Subject: Review of water issues in the 2019 legislative session

Session Overview

In January, WPUDA members were prepared for the biennial long, 105-day regular legislative session. With Democrats taking control of both chambers of the legislature in the fall elections and rumors of Governor Inslee potentially running for President, this session was expected to focus on issues surrounding climate change, orca recovery, environmental policy issues, tax policy and adopting a biennial operating and capital budget.

Overall, lawmakers introduced a smaller-than-usual number of bills addressing water policy or regulation of water utilities, and none of these bills survived the legislative process to final passage.

Water Legislation That Didn't Go the Distance

Water utility representatives dedicated time before and during session to development and amendment of several bills that were heard and passed out of committee and, in some cases, their house of origin, but they ultimately weren't seen by legislators as must-pass measures this session. These bills remain technically eligible for consideration again in next year's short, 60-day session, which is considered an extension of this year's long session.

Drought Preparedness

The Department of Ecology requested legislation concerning drought preparedness and response ([HB 1622/SB 5675](#)). ESHB 1622 passed the House by a vote of 80-16 and advanced out of Senate policy and fiscal committees, but it failed to be taken up by the full Senate.

Firefighting Foam

Concerns about surface- and groundwater contamination from PFAS chemicals led to introduction of [SB 1143](#) requiring notification to state agencies when firefighting foam containing PFAS is used or discharged. However, this bill didn't advance after passing out of committee.

Low-Water Landscaping

[HB 1165](#) was introduced to encourage low-water landscaping practices as a drought alleviation tool. It passed out of its policy and fiscal committees, but failed to advance after that.

Accessory Dwelling Units

A number of conversations were held regarding [HB 1797/SB 5812](#) concerning local governments planning and zoning for accessory dwelling units (ADUs). ESSB 5812 passed the Senate by a vote of 38-10 and advanced out of committee in the House. But it failed to advance out of House Rules. The bill's provisions affecting how utilities provide water and sewer service to ADUs raised concerns with WPUDA members and generated utility-sponsored amendments that were incorporated into the substitute bill.

Local Government Infrastructure

There were a number of conversations about local government infrastructure needs before session began. Below are a list of bill that were introduced on this subject during session but did not pass:

- [HB 1285/SB 5307](#) – Adding the State Treasurer to the Public Works Board.
- [HB 1441/SB 5304](#) – Allowing the state Housing Finance Commission to make bond-financed loans to local governments for their infrastructure projects, including water and sewer system improvements.
- [HB 1680](#) – Directing that 4.1 percent of revenue from the real-estate excise tax go to the Public Works Assistance Account (PWAA) for construction of infrastructure supporting housing development.
- [HB 1691](#) - Requiring that, for the next ten years, all the PWAA's revenue from the solid-waste collection tax must go toward removal of fish-passage barriers (mainly culverts).
- [HB 1889/SB 5136](#) – Establishing a grants program for projects enhancing water supply, flood control and stormwater management in regions of the state.
- [SB 5788](#) – Very similar to HB 1691 in funding culvert removal, plus the provision from HB 1680 directing that revenue from the real-estate excise tax go to the PWAA for construction of infrastructure supporting housing development.
- [SB 5864](#) and accompanying [Senate Joint Resolution 8209](#) – Making the PWAA more closely resemble what it has commonly been called since its creation in 1985, a public works trust fund, by shielding the account's loan-repayment and tax revenue from diversion for other uses, such as K-12 education and balancing the state operating budget, which the legislature has done repeatedly since the Great Recession ten years ago. Making the measure part of the state constitution would require majority approval of SJR 8209 by voters in a statewide general election.

Capital Budget

A number of water related items were included in the capital budget ([Substitute House Bill 1102](#)) that passed the legislature:

Water System Repair and Consolidation Grants (\$1.5 million)

The capital budget provides \$1.5 million in Section 2068 for water system repair and consolidation grants. This amount is far below the \$10 million requested by the state Department of Health for what are also called WSARP grants, issued through Health's Water System Acquisition and Rehabilitation Program. WPUA worked closely with Health's Office of Drinking Water to support the agency's \$10 million funding request last fall. PUDs have benefited from past WSARP grants and are strong supporters of this program.

Public Works Board Project Funding (\$96.5 million)

The capital budget provides \$95 million in Section 1031 for the Public Works Board to disburse in local project loans and grants from the Public Works Assistance Account (PWAA), commonly called the Public Works Trust Fund. Of this \$95 million, \$9.8 million is earmarked for grants to five community water and wastewater projects, and another \$13 million is earmarked for loans to two of these projects, leaving \$72.2 million for the board to allocate through its conventional application process.

This amount is far below the \$217 million that the Public Works Board requested for its budget, but it marks the first time in several years that the Legislature has left this much money in the PWAA for project loans, rather than diverting the whole account balance to other purposes such as education, a practice that lawmakers began in the wake of the Great Recession ten years ago and the state Supreme Court's 2012 McCleary school-funding decision.

Drinking Water Loans (\$46 million)

\$46 million is appropriated for low-interest loans through the Department of Health's Drinking Water State Revolving Fund to publicly- and privately-owned water systems statewide for designing, financing, and constructing improvements aimed at increasing public health protection and compliance with drinking water regulations.

Water Quality (\$246 million)

The Department of Ecology is provided \$246 million to competitively award loans and grants statewide under an integrated approach to water quality financing:

- \$204 million is for the Water Pollution Control Revolving program, \$30 million is for the Centennial Clean Water program, and \$12 million is for the state match for the revolving fund. These programs provide low interest loans and grants, respectively, to public entities to plan, design, acquire, construct, and improve water pollution control facilities and nonpoint pollution control activities.

Water Supply (\$124.2 million)

\$124.2 million is provided to the Department of Ecology to continue programs whose purpose is to increase water supplies to meet the instream flow needs of fish and wildlife and the out-of-stream needs of agriculture and communities:

- \$40 million is for continued implementation of the Columbia River Basin Supply Development program;
- \$40 million is for additional work on projects under the Yakima River Basin Integrated Plan;

- \$4.2 million is for projects related to the Sunnyside Valley Irrigation District projects; and
- \$40 million is for work related to streamflow restoration as directed by the Hirst/Foster legislation passed in 2018, ESSB 6091.

Operating Budget

A number of water-related items were included in the operating budget ([Engrossed Substitute House Bill 1109](#)) that passed the legislature, including:

Align Drinking Water Funding and Fund Water System Consolidation Studies (\$834,000)

Additional appropriation authority is provided for the Drinking Water Assistance Administrative Account to align funding with staffing costs and provide consolidation grants to successful water utilities to study the feasibility of owning, operating, and maintaining smaller failing water systems within their service areas. These study grants, likely for up to \$30,000 each and totaling \$300,000 for the biennium, will come from the Department of Health's one-percent fee for administration of Drinking Water State Revolving Fund loans. The grants, which Health offered from 2014 until last year when they lost their initial funding source, have helped a number of PUDs cover their cost of assessing the feasibility of acquiring water systems. (Drinking Water Assistance Administrative Account-State)

Drought Preparedness (\$2,000,000)

One-time funding is provided to implement strategies to respond to drought conditions. (General Fund-State)

Water Right Adjudication Options (\$592,000)

One-time funding is provided to assess and explore opportunities to resolve water rights uncertainties and disputes through adjudications in selected basins where tribal senior water rights, unquantified claims, and similar uncertainties about the seniority, quantity, and validity of water rights exist. (Reclamation Account-State)

Water Quality Enforcement (\$490,000)

Ongoing funding and staff are provided for additional water quality inspectors in Puget Sound who will focus on point source pollution, with an initial emphasis on industrial stormwater. These inspectors will provide technical assistance regarding best management practices to mitigate or prevent pollutant discharges and, where needed, compliance assistance and enforcement to improve water quality. (General Fund-State)

Puget Sound Instream Flow Enforcement (\$1,320,000)

Ongoing funding and staff are provided for additional water masters in Puget Sound to provide technical assistance, voluntary compliance, and formal enforcement actions to manage water resources and ensure compliance with state water law. (General Fund-State)

Spokane River Task Force (\$500,000)

The Spokane River Toxics Task Force is a group of governmental agencies, private industries, and environmental organizations that has been developing a plan to bring the

Spokane River into compliance with water quality standards for polychlorinated biphenyls (PCBs). One-time funding is provided for the Task Force to identify and remove sources of PCBs in the Spokane River. (Model Toxics Control Operating Account-State)

Walla Walla Watershed (\$514,000)

One-time funding is provided for implementation of Second Substitute Senate Bill 5352 (Walla Walla watershed pilot), including providing operating support to the Walla Walla Watershed Management Partnership and developing a 30-year integrated water resource management strategic plan. (General Fund-State)

Environmental Justice Task Force (\$390,000)

One-time funding is provided for an Environmental Justice Task Force. (General Fund-State)

Lead Testing/Schools (\$1,000,000)

Funding is provided for the Department of Health (DOH) for lead testing in public schools. DOH must determine which school districts have the highest priority and test those districts first, as well as communicate to parents, educators, school staff and the public regarding the test results and their potential consequences. (General Fund-State)

Update Salmon Recovery Strategy (\$150,000)

One-time funding is provided for the Governor's Salmon Recovery Office to assist the Governor's Office with an update to a statewide salmon recovery strategy. (General Fund-State)

Nisqually Watershed Stewardship Plan (\$350,000)

One-time funding is provided to contract for staff support of the Nisqually Watershed Stewardship Plan. (General Fund-State)

Policy Bills That Passed the Legislature

The legislative session led to passage of only a few of the policy bills tracked by WPUDA. Below are some of the most relevant bills that passed the legislature:

Appliance Efficiency Standards

[2SHB 1444](#) makes a number of changes to appliance efficiency standards. The most relevant of these for PUD water utilities are:

- Showerhead tub spout diverter combinations and showerheads must meet the requirements in the California Code of Regulations, Title 20, section 1605.3 in effect as of January 1, 2018.
- New State Appliance Efficiency and Testing Standards. State appliance efficiency and testing standards are established for the following appliances:
 - commercial dishwashers
 - faucets, except for metering faucets;
 - showerheads; spray sprinkler bodies;
 - urinals and water closets (toilets)

- If manufactured on or after January 1, 2021, the following appliances may not be sold or offered for sale, lease or rent in the state unless they meet the state's efficiency standards:
 - commercial dishwashers
 - faucets, except for metering faucets;
 - showerheads; spray sprinkler bodies
- Certain Water Conservation Performance Standards are repealed including:
 - certain water conservation performance standards;
 - the authority of the State Building Code Council to adopt rules that implement and incorporate the water conservation performance standards; and
 - the preemption of local government codes by the state water conservation performance standards

Walla Walla Watershed Management Pilot Program

[2SSB 5352](#) extends the date for the Walla Walla pilot local water management program and requires the local water management board to accomplish a number of tasks.

Fracking Ban

[SB 5145](#), which bans the use of hydraulic fracturing, aka fracking, to extract oil and gas from geologic formations in Washington. Protection of groundwater was a main reason for the bill's introduction. Its intent section, which was removed in the House before final passage, stated that fracking "requires large quantities of fracking fluids containing chemicals that are exempt from public disclosure and which may contaminate groundwater and surface waters used as drinking water supplies."

Tiny Houses

[ESSB 5383](#) allows cities and towns to adopt ordinances regulating the creation of tiny house communities. The legislation also adds some protections for tiny homes in manufactured and mobile home communities, requires land owners to make reasonable accommodation for utility hookups, adds protections for tiny house tenants, defines tiny house and tiny house communities and requires the Building Code Council to adopt standards specific to tiny houses.

Local Government Procurement Modernization and Efficiency

[ESSB 5418](#) allows public bodies to procure public works with unit priced contracts. The bill also increases the limit for small works rosters, limited public works procurements, PUD and cities procurements and makes some changes to lowest responsible bidder requirements for second-class cities or towns and alternative bid procedures.

Climate for Progress on Key Issues

As we look ahead and try to predict what will happen this interim and next session, we should keep several key points in mind:

- Democrats control both chambers of the legislature, as well as the Governor's Office.
- Governor Inslee is running for President of the United States.

- The Joint Legislative Task Forces on Water Supply and Water Resource Mitigation, established in 2018 through the Hirst/Foster legislation, ESSB 6091, will continue to meet during the interim.
- Next year will be a short, 60-day legislative session. This session will lead into fall elections in November of 2020.
- Bills that were introduced this session carry over and can also be taken up next session. Additionally, policy bills that advanced to or beyond Rules Committees this session will be returned to the Rules Committee in their chamber of origin.

Recommendations for interim activities

These points suggest a future of both opportunity and risk for PUD water systems. The clearest recommendation is that we must prepare for the 2020 legislative session and engage in pre-session activities important to WPUDA members.

Several steps will help utilities succeed in legislative negotiations, while also improving our position in forums outside the Legislature:

- Updating WPUDA's legislative and administrative priorities.
- Continuing and expanding outreach efforts with other interest groups.
- Determining which issues WPUDA should develop official positions on, as we usually do before session.
- Informing legislators through tours of local utility facilities combined with presentations about local water issues and the need for legislative action to resolve these issues and provide financial assistance. Ongoing threats to funding for the Public Works Trust Fund, and the growing need for funding of water systems consolidation and repair grants, are particularly urgent issues for WPUDA members to discuss with their legislators, and to discuss within WPUDA for ideas about how to build and strengthen the state's role in helping utilities meet their local water infrastructure investment needs.