

2 ESHB 2303 - S COMM AMD

3 By Committee on Agriculture & Environment

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
8 as follows:

9 (1) The legislature recognizes the value of interties for improving
10 the reliability of public water systems, enhancing their management,
11 and more efficiently utilizing the increasingly limited resource.
12 Given the continued growth in the most populous areas of the state, the
13 increased complexity of public water supply management, and the trend
14 toward regional planning and regional solutions to resource issues,
15 interconnections of public water systems through interties provide a
16 valuable tool to ensure reliable public water supplies for the citizens
17 of the state. Public water systems have been encouraged in the past to
18 utilize interties to achieve public health and resource management
19 objectives. The legislature finds that it is in the public interest to
20 recognize interties existing and in use as of January 1, 1991, and to
21 have associated water rights modified by the department of ecology to
22 reflect current use of water through those interties, pursuant to
23 subsection (3) of this section. The legislature further finds it in
24 the public interest to develop a coordinated process to review
25 proposals for interties commencing use after January 1, 1991.

26 (2) For the purposes of this section, the following definitions
27 shall apply:

28 (a) "Interties" are interconnections between public water systems
29 permitting exchange or delivery of water between those systems for
30 other than emergency supply purposes, where such exchange or delivery
31 is within established instantaneous and annual withdrawal rates
32 specified in the systems' existing water right permits or certificates,
33 or contained in claims filed pursuant to chapter 90.14 RCW, and which
34 results in better management of public water supply consistent with
35 existing rights and obligations. Interties include interconnections
36 between public water systems permitting exchange or delivery of water

1 to serve as primary or secondary sources of supply, but do not include
2 development of new sources of supply to meet future demand.

3 (b) "Service area" is the area designated in a water system plan or
4 a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW
5 respectively. When a public water system does not have a designated
6 service area subject to the approval process of those chapters, the
7 service area shall be the designated place of use contained in the
8 water right permit or certificate, or contained in the claim filed
9 pursuant to chapter 90.14 RCW.

10 (3) Public water systems with interties existing and in use as of
11 January 1, 1991, or that have received written approval from the
12 department of health prior to that date, shall file written notice of
13 those interties with the department of health and the department of
14 ecology. The notice may be incorporated into the public water system's
15 five-year update of its water system plan, but shall be filed no later
16 than June 30, 1996. The notice shall identify the location of the
17 intertie; the dates of its first use; the purpose, capacity, and
18 current use; the intertie agreement of the parties and the service
19 areas assigned; and other information reasonably necessary to modify
20 the water right permit. Notwithstanding the provisions of RCW
21 90.03.380 and 90.44.100, for public water systems with interties
22 existing and in use as of January 1, 1991, the department of ecology,
23 upon receipt of notice meeting the requirements of this subsection,
24 shall, as soon as practicable, modify the place of use descriptions in
25 the water right permits, certificates, or claims to reflect the actual
26 use through such interties, provided that the place of use is within
27 service area designations established in a water system plan approved
28 pursuant to chapter 43.20 RCW, or a coordinated water system plan
29 approved pursuant to chapter 70.116 RCW, and further provided that the
30 water used is within the instantaneous and annual withdrawal rates
31 specified in the water right permit and that no outstanding complaints
32 of impairment to existing water rights have been filed with the
33 department of ecology prior to September 1, 1991. Where such
34 complaints of impairment have been received, the department of ecology
35 shall make all reasonable efforts to resolve them in a timely manner
36 through agreement of the parties or through available administrative
37 remedies.

38 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
39 exchange or delivery of water through interties commencing use after

1 January 1, 1991, shall be permitted when the intertie improves overall
2 system reliability, enhances the manageability of the systems, provides
3 opportunities for conjunctive use, or delays or avoids the need to
4 develop new water sources, and otherwise meets the requirements of this
5 section, provided that ((each)) a supplying public water system's water
6 use shall not exceed the instantaneous or annual withdrawal rate
7 specified in its water right authorization, shall not adversely affect
8 existing water rights, and shall not be inconsistent with state-
9 approved plans such as water system plans or other plans which include
10 specific proposals for construction of interties. A receiving public
11 water system's use may exceed its water right authorization if the
12 receiving public water system's withdrawal does not exceed the
13 instantaneous or annual withdrawal rate specified in the receiving
14 public water system's water right authorization. Interties commencing
15 use after January 1, 1991, shall not be inconsistent with regional
16 water resource plans developed pursuant to chapter 90.54 RCW.

17 (5) For public water systems subject to the approval process of
18 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties
19 commencing use after January 1, 1991, shall be incorporated into water
20 system plans pursuant to chapter 43.20 RCW or coordinated water system
21 plans pursuant to chapter 70.116 RCW and submitted to the department of
22 health and the department of ecology for review and approval as
23 provided for in subsections (5) through (9) of this section. The plan
24 shall state how the proposed intertie will improve overall system
25 reliability, enhance the manageability of the systems, provide
26 opportunities for conjunctive use, or delay or avoid the need to
27 develop new water sources.

28 (6) The department of health shall be responsible for review and
29 approval of proposals for new interties. In its review the department
30 of health shall determine whether the intertie satisfies the criteria
31 of subsection (4) of this section, with the exception of water rights
32 considerations, which are the responsibility of the department of
33 ecology, ((and)) shall determine whether the intertie is necessary to
34 address emergent public health or safety concerns associated with
35 public water supply, and shall determine whether long-term supply is
36 addressed in the intertie agreement between the systems.

37 (7) If the intertie is determined by the department of health to be
38 necessary to address emergent public health or safety concerns
39 associated with public water supply, the public water system shall

1 amend its water system plan as required and shall file an application
2 with the department of ecology to change its existing water right to
3 reflect the proposed use of the water as described in the approved
4 water system plan. The department of ecology shall process the
5 application for change pursuant to RCW 90.03.380 or 90.44.100 as
6 appropriate, except that, notwithstanding the requirements of those
7 sections regarding notice and protest periods, applicants shall be
8 required to publish notice one time, and the comment period shall be
9 fifteen days from the date of publication of the notice. Within sixty
10 days of receiving the application, the department of ecology shall
11 issue findings and advise the department of health if existing water
12 rights are determined to be adversely affected. If no determination is
13 provided by the department of ecology within the sixty-day period, the
14 department of health shall proceed as if existing rights are not
15 adversely affected by the proposed intertie. The department of ecology
16 may obtain an extension of the sixty-day period by submitting written
17 notice to the department of health and to the applicant indicating a
18 definite date by which its determination will be made. No additional
19 extensions shall be granted, and in no event shall the total review
20 period for the department of ecology exceed one hundred eighty days.

21 (8) If the department of health determines the proposed intertie
22 appears to meet the requirements of subsection (4) of this section but
23 is not necessary to address emergent public health or safety concerns
24 associated with public water supply, the department of health shall
25 instruct the applicant to submit to the department of ecology an
26 application for change to the underlying water right or claim as
27 necessary to reflect the new place of use. The department of ecology
28 shall consider the applications pursuant to the provisions of RCW
29 90.03.380 and 90.44.100 as appropriate. If in its review of proposed
30 interties and associated water rights the department of ecology
31 determines that additional information is required to act on the
32 application, the department may request applicants to provide
33 information necessary for its decision, consistent with agency rules
34 and written guidelines. Parties disagreeing with the decision of the
35 department of ecology on the application for change in place of use may
36 appeal the decision to the pollution control hearings board.

37 (9) The department of health may approve plans containing intertie
38 proposals prior to the department of ecology's decision on the water
39 right application for change in place of use. However, notwithstanding

1 such approval, construction work on the intertie shall not begin until
2 the department of ecology issues the appropriate water right document
3 to the applicant consistent with the approved plan.

4 **Sec. 2.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read
5 as follows:

6 When an application complying with the provisions of this chapter
7 and with the rules (~~and regulations~~) of the department has been
8 filed, the same shall be placed on record with the department, and it
9 shall be its duty to investigate the application, and determine what
10 water, if any, is available for appropriation, and find and determine
11 to what beneficial use or uses it can be applied. If it is proposed to
12 appropriate water for irrigation purposes, the department shall
13 investigate, determine and find what lands are capable of irrigation by
14 means of water found available for appropriation. If it is proposed to
15 appropriate water for the purpose of power development, the department
16 shall investigate, determine and find whether the proposed development
17 is likely to prove detrimental to the public interest, having in mind
18 the highest feasible use of the waters belonging to the public. If the
19 application does not contain, and the applicant does not promptly
20 furnish sufficient information on which to base such findings, the
21 department may issue a preliminary permit, for a period of not to
22 exceed three years, requiring the applicant to make such surveys,
23 investigations, studies, and progress reports, as in the opinion of the
24 department may be necessary. If the applicant fails to comply with the
25 conditions of the preliminary permit, it and the application or
26 applications on which it is based shall be automatically canceled and
27 the applicant so notified. If the holder of a preliminary permit
28 shall, before its expiration, file with the department a verified
29 report of expenditures made and work done under the preliminary permit,
30 which, in the opinion of the department, establishes the good faith,
31 intent and ability of the applicant to carry on the proposed
32 development, the preliminary permit may, with the approval of the
33 governor, be extended, but not to exceed a maximum period of five years
34 from the date of the issuance of the preliminary permit. The
35 department shall make and file as part of the record in the matter,
36 written findings of fact concerning all things investigated, and if it
37 shall find that there is water available for appropriation for a
38 beneficial use, and the appropriation thereof as proposed in the

1 application will not impair existing rights or be detrimental to the
2 public welfare, it shall issue a permit stating the amount of water to
3 which the applicant shall be entitled and the beneficial use or uses to
4 which it may be applied: PROVIDED, That where the water applied for is
5 to be used for irrigation purposes, it shall become appurtenant only to
6 such land as may be reclaimed thereby to the full extent of the soil
7 for agricultural purposes. But where there is no unappropriated water
8 in the proposed source of supply, or where the proposed use conflicts
9 with existing rights, or threatens to prove detrimental to the public
10 interest, having due regard to the highest feasible development of the
11 use of the waters belonging to the public, it shall be duty of the
12 department to reject such application and to refuse to issue the permit
13 asked for. If the permit is refused because of conflict with existing
14 rights and such applicant shall acquire same by purchase or
15 condemnation under RCW 90.03.040, the department may thereupon grant
16 such permit. Any application may be approved for a less amount of
17 water than that applied for, if there exists substantial reason
18 therefor, and in any event shall not be approved for more water than
19 can be applied to beneficial use for the purposes named in the
20 application. In determining whether or not a permit shall issue upon
21 any application, it shall be the duty of the department to investigate
22 all facts relevant and material to the application. If the applicant
23 is a public water system that is a party to an existing intertie
24 agreement, the department shall also consider the existence, nature,
25 economics, and terms of the agreement between the intertied public
26 water systems when making a determination on the application for new
27 water rights by the public water system. After the department approves
28 ((said)) the application in whole or in part and before any permit
29 shall be issued thereon to the applicant, such applicant shall pay the
30 fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the event a
31 permit is issued by the department upon any application, it shall be
32 its duty to notify the director of fish and wildlife of such issuance."

1 **ESHB 2303** - S COMM AMD
2 By Committee on Agriculture & Environment

3
4 On page 1, line 1 of the title, after "rights;" strike the
5 remainder of the title and insert "and amending RCW 90.03.383 and
6 90.03.290."

--- END ---