

2 **E2SHB 2925** - S COMM AMD

3 By Committee on Agriculture & Environment

4

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

7 "NEW SECTION. **Sec. 1.** The legislature finds that it is in the  
8 public interest for water rights held by public water systems to be  
9 managed and regulated in a manner that:

10 (1) Allows such systems to prolong and maximize the use of water  
11 rights applied to municipal purposes consistent with the population  
12 demand projections established in state-approved water system plans  
13 and, if applicable, adopted growth management plans; and

14 (2) Promotes water conservation, with enhanced efforts occurring in  
15 water critical areas, promotes water system efficiencies, and  
16 eliminates disincentives for investments in water efficient  
17 technologies.

18 **Sec. 2.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read  
19 as follows:

20 (1) The legislature recognizes the value of interties for improving  
21 the reliability of public water systems, enhancing their management,  
22 and more efficiently utilizing the increasingly limited resource.  
23 Given the continued growth in the most populous areas of the state, the  
24 increased complexity of public water supply management, and the trend  
25 toward regional planning and regional solutions to resource issues,  
26 interconnections of public water systems through interties provide a  
27 valuable tool to ensure reliable public water supplies for the citizens  
28 of the state. Public water systems have been encouraged in the past to  
29 utilize interties to achieve public health and resource management  
30 objectives. The legislature finds that it is in the public interest to  
31 recognize interties existing and in use as of January 1, 1991, and to  
32 have associated water rights modified by the department of ecology to  
33 reflect current use of water through those interties, pursuant to  
34 subsection (3) of this section. The legislature further finds it in

1 the public interest to develop a coordinated process to review  
2 proposals for interties commencing use after January 1, 1991.

3 (2) For the purposes of this section, the following definitions  
4 shall apply:

5 (a) "Interties" are interconnections between public water systems  
6 permitting exchange, acquisition, or delivery of wholesale and/or  
7 retail water between those systems for other than emergency supply  
8 purposes, where such exchange, acquisition, or delivery is within  
9 established instantaneous and annual withdrawal rates specified in the  
10 systems' existing water right permits or certificates, or contained in  
11 claims filed pursuant to chapter 90.14 RCW, and which results in better  
12 management of public water supply consistent with existing rights and  
13 obligations. Interties include interconnections between public water  
14 systems permitting exchange, acquisition, or delivery of water to serve  
15 as primary or secondary sources of supply(~~(, but do not include~~  
16 ~~development of new sources of supply to meet future demand)) and the  
17 development of new sources of supply to meet future demands if the  
18 water system or systems receiving water through such an intertie make  
19 efficient use of existing sources of water supply and the provision of  
20 water through such an intertie is consistent with local land use plans  
21 and a state-approved water system plan. For this purpose, a system's  
22 full compliance with the state department of health's most recent  
23 conservation guidelines for such systems is deemed efficient use.~~

24 (b) "Service area" is the area designated in a water system plan or  
25 a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW  
26 respectively. When a public water system does not have a designated  
27 service area subject to the approval process of those chapters, the  
28 service area shall be the designated place of use contained in the  
29 water right permit or certificate, or contained in the claim filed  
30 pursuant to chapter 90.14 RCW.

31 (3)(a) Public water systems with interties existing and in use as  
32 of January 1, 1991, or that have received written approval from the  
33 department of health prior to that date, shall file written notice of  
34 those interties with the department of health and the department of  
35 ecology. The notice may be incorporated into the public water system's  
36 five-year update of its water system plan, but shall be filed no later  
37 than June 30, 1996. The notice shall identify the location of the  
38 intertie; the dates of its first use; the purpose, capacity, and  
39 current use; the intertie agreement of the parties and the service

1 areas assigned; and other information reasonably necessary to modify  
2 the public water system's water right (~~(permit)~~). Notwithstanding the  
3 provisions of RCW 90.03.380 and 90.44.100, for public water systems  
4 with interties existing and in use or with written approval as of  
5 January 1, 1991, the department of ecology, upon receipt of notice  
6 meeting the requirements of this subsection, shall, as soon as  
7 practicable, modify the place of use descriptions in the water right  
8 permits, certificates, or claims to reflect the actual or proposed use  
9 through such interties, provided that the place of use is within  
10 service area designations established in a water system plan approved  
11 pursuant to chapter 43.20 RCW, or a coordinated water system plan  
12 approved pursuant to chapter 70.116 RCW, and further provided that the  
13 water used is within the instantaneous and annual withdrawal rates  
14 specified in the water rights (~~(permit)~~) and that no outstanding  
15 complaints of impairment to existing water rights have been filed with  
16 the department of ecology prior to September 1, 1991. Where such  
17 complaints of impairment have been received, the department of ecology  
18 shall make all reasonable efforts to resolve them in a timely manner  
19 through agreement of the parties or through available administrative  
20 remedies.

21 (b) An intertie meeting the requirements of this subsection (3) for  
22 modifying the place of use description in a water right permit,  
23 certificate, or claim may be used to its full design or built capacity  
24 within the most recently approved retail or wholesale or retail and  
25 wholesale service area, without further approval under this section and  
26 without regard to the capacity actually used before January 1, 1991.  
27 Any intertie meeting the requirements of this section, however, must be  
28 reviewed, analyzed, and approved by the department of health in  
29 collaboration with the department of ecology, and in accordance with  
30 coordinated water system plan requirements under chapter 70.116 RCW.  
31 In addition, any intertie meeting the requirements of this subsection  
32 must undergo environmental review in accordance with chapter 43.21C RCW  
33 and ensure that base flows in affected surface waters are retained to  
34 protect the quality of the natural environment as provided in chapter  
35 90.22 RCW or RCW 90.54.020(3) or 75.20.050. Any existing instream flow  
36 conditions on the water right permit or certificate shall be considered  
37 sufficient, unless compelling evidence exists to the contrary using the  
38 best information available at the time of the decision to change the  
39 water rights. If this evidence exists, the department, on a case-by-

1 case basis, may impose interim instream flows that are more restrictive  
2 than the instream flow condition on the water rights related only to  
3 that portion of the water right being used in the changed place of use.  
4 As a condition of the changed place of use, any interim instream flow  
5 condition on an approval to change a water right under this section is  
6 effective until instream flows are developed under basin planning as  
7 articulated by chapter . . . , Laws of 1998 (Engrossed Substitute House  
8 Bill No. 2514) or adopted by rule. At that time, the portion of the  
9 water right being used in a new place of use is subject to the  
10 developed or adopted instream flows.

11 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,  
12 exchange, acquisition, or delivery of water through interties approved  
13 by the department of health commencing use after January 1, 1991, shall  
14 be permitted when the intertie improves overall system reliability,  
15 enhances the manageability of the systems, provides opportunities for  
16 conjunctive use, or delays or avoids the need to develop new water  
17 sources, and otherwise meets the requirements of this section, provided  
18 that each public water system's water ((use)) withdrawal shall not  
19 exceed the instantaneous or annual withdrawal rate specified in its  
20 water right authorization, shall not adversely affect existing water  
21 rights, and shall not be inconsistent with state-approved plans such as  
22 water system plans or other plans which include specific proposals for  
23 construction of interties. Interties commencing use after January 1,  
24 1991, ((shall not be inconsistent)) must be deemed consistent with  
25 regional water resource plans developed pursuant to chapter 90.54 RCW  
26 or chapter 90.82 RCW.

27 (5) For public water systems subject to the approval process of  
28 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties  
29 commencing use after January 1, 1991, shall be incorporated into water  
30 system plans pursuant to chapter 43.20 RCW or coordinated water system  
31 plans pursuant to chapter 70.116 RCW and submitted to the department of  
32 health and the department of ecology for review and approval as  
33 provided for in subsections (5) through (9) of this section. The plan  
34 shall state how the proposed intertie will improve overall system  
35 reliability, enhance the manageability of the systems, provide  
36 opportunities for conjunctive use, or delay or avoid the need to  
37 develop new water sources.

38 (6) The department of health shall be responsible for review and  
39 approval of proposals for new interties. In its review the department

1 of health shall determine whether the intertie satisfies the criteria  
2 of subsection (4) of this section, with the exception of water rights  
3 considerations, which are the responsibility of the department of  
4 ecology, and shall determine whether the intertie is necessary to  
5 address emergent public health or safety concerns associated with  
6 public water supply.

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

30 (8) If the department of health determines the proposed intertie  
31 appears to meet the requirements of subsection (4) of this section but  
32 is not necessary to address emergent public health or safety concerns  
33 associated with public water supply, the department of health shall  
34 instruct the applicant to submit to the department of ecology an  
35 application for change to the underlying water right or claim as  
36 necessary to reflect the new place of use. The department of ecology  
37 shall consider the applications pursuant to the provisions of RCW  
38 90.03.380 and 90.44.100 as appropriate. The department of ecology  
39 shall not deny or limit a change of place of use for an intertie on the

1 grounds that the holder of a permit has not yet put all of the water  
2 authorized in the permit to beneficial use. If in its review of  
3 proposed interties and associated water rights the department of  
4 ecology determines that additional information is required to act on  
5 the application, the department may request applicants to provide  
6 information necessary for its decision, consistent with agency rules  
7 and written guidelines. Parties disagreeing with the decision of the  
8 department of ecology ((en)) to approve or deny the application for  
9 change in place of use may appeal the decision to the pollution control  
10 hearings board.

11 (9) The department of health may approve plans containing intertie  
12 proposals prior to the department of ecology's decision on the water  
13 right application for change in place of use. However, notwithstanding  
14 such approval, construction work on the intertie shall not begin until  
15 the department of ecology issues the appropriate water right document  
16 to the applicant consistent with the approved plan.

17 (10) An intertie shall not be used to deliver a primary or  
18 secondary supply of water to a receiving system on a temporary basis  
19 unless the terms of the intertie agreement initiated after the  
20 effective date of this section specify the source of the water that  
21 will be used by the receiving system to replace the water delivered on  
22 the temporary basis and provide that replacement water will be  
23 available for delivery to or use by the receiving system before  
24 delivery by the supplying system under the agreement is terminated.  
25 However, if a primary or secondary supply of water is delivered to a  
26 receiving system on a temporary basis by means of an intertie on the  
27 effective date of this section and the agreement between the supplying  
28 system and receiving system does not contain such provision for such a  
29 replacement supply of water for the receiving system, the delivery of  
30 the water by the supplying system to the receiving system shall not be  
31 terminated until the agreement is modified to establish such provisions  
32 and such replacement water is available for delivery to or use by the  
33 receiving system unless the termination is pursuant to an existing  
34 contract containing a specific termination date or specific conditions  
35 that may result in termination.

36 **Sec. 3.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read  
37 as follows:

1       (1) Upon a showing satisfactory to the department that any  
2 appropriation has been perfected in accordance with the provisions of  
3 this chapter, it shall be the duty of the department to issue to the  
4 applicant a certificate stating such facts in a form to be prescribed  
5 by him, and such certificate shall thereupon be recorded with the  
6 department. Any original water right certificate issued, as provided  
7 by this chapter, shall be recorded with the department and thereafter,  
8 at the expense of the party receiving the same, be by the department  
9 transmitted to the county auditor of the county or counties where the  
10 distributing system or any part thereof is located, and be recorded in  
11 the office of such county auditor, and thereafter be transmitted to the  
12 owner thereof.

13       (2) If a public water system is providing water for municipal  
14 supply purposes under a certificated water right, the instantaneous and  
15 annual withdrawal rates specified in the certificate are deemed valid  
16 and perfected.

17       (3) If a federal reclamation project is providing water for  
18 reclamation purposes under a certificated water right, the  
19 instantaneous and annual withdrawal rates specified in the certificate  
20 are deemed valid and perfected.

21       (4) If an irrigation district is providing water for the purposes  
22 authorized by chapter 87.03 RCW under a certificated water right, the  
23 instantaneous and annual withdrawal rates specified in the certificate  
24 are deemed valid and perfected.

25       (5) Notwithstanding any other provisions of this section, the  
26 public water system, federal reclamation project, or irrigation  
27 district must demonstrate to the department of ecology in accordance  
28 with water system plans and reviews pursuant to chapter 70.119A or  
29 87.03 RCW, that the instantaneous and annual withdrawal rates will be  
30 necessary in order to accommodate the needs of its users during the  
31 most recent projection for a fifty-year period. To demonstrate needs  
32 for unused water to be perfected, a water conservation plan must be  
33 submitted to and approved by the department. For public water systems,  
34 this plan must be in full compliance with the state department of  
35 health's most recent conservation guidelines.

36       **Sec. 4.** RCW 90.14.140 and 1987 c 125 s 1 are each amended to read  
37 as follows:

1 (1) For the purposes of RCW 90.14.130 through 90.14.180,  
2 "sufficient cause" shall be defined as the nonuse of all or a portion  
3 of the water by the owner of a water right for a period of five or more  
4 consecutive years where such nonuse occurs as a result of:

5 (a) Drought, or other unavailability of water;

6 (b) Active service in the armed forces of the United States during  
7 military crisis;

8 (c) Nonvoluntary service in the armed forces of the United States;

9 (d) The operation of legal proceedings;

10 (e) Federal laws imposing land or water use restrictions either  
11 directly or through the voluntary enrollment of a landowner in a  
12 federal program implementing those laws, or acreage limitations, or  
13 production quotas;

14 (f) An elapse of time occurring while a request or application is  
15 processed for transferring or changing a water right;

16 (g) The implementation, after January 1, 1991, of practices or  
17 technologies or the installation or repair of facilities, including but  
18 not limited to water conveyance practices, technologies, or facilities,  
19 that are more water use efficient than practices, technologies, or  
20 facilities previously used under the water right.

21 (2) Notwithstanding any other provisions of RCW 90.14.130 through  
22 90.14.180, there shall be no relinquishment of any water right:

23 (a) If such right is claimed for power development purposes under  
24 chapter 90.16 RCW and annual license fees are paid in accordance with  
25 chapter 90.16 RCW, or

26 (b) If such right is used for a standby or reserve water supply to  
27 be used in time of drought or other low flow period so long as  
28 withdrawal or diversion facilities are maintained in good operating  
29 condition for the use of such reserve or standby water supply, or

30 (c) If, within five years of its last use, such right is claimed  
31 for a determined future development to take place ((either)) at any  
32 time within fifteen years of either July 1, 1967, or the most recent  
33 beneficial use of the water right, whichever date is later, or

34 (d) If such right is claimed for municipal water supply purposes  
35 under chapter 90.03 RCW, or

36 (e) If such waters are not subject to appropriation under the  
37 applicable provisions of RCW 90.40.030 as now or hereafter amended."



1 **E2SHB 2925** - S COMM AMD  
2 By Committee on Agriculture & Environment

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4 On page 1, line 1 of the title, after "water;" strike the remainder  
5 of the title and insert "amending RCW 90.03.383, 90.03.330, and  
6 90.14.140; and creating a new section."

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