

HOUSE BILL REPORT

E2SHB 2925

As Passed House:
February 16, 1998

Title: An act relating to water.

Brief Description: Changing water provisions.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Chandler, Cairnes, Radcliff, Robertson, Linville, Backlund, Regala, Mitchell and Scott).

Brief History:

Committee Activity:

Agriculture & Ecology: 2/2/98, 2/5/98 [DPS];
Appropriations: 2/7/98 [DP2S(w/o sub AGEC)].

Floor Activity:

Passed House: 2/16/98, 73-25.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper; Delvin; Koster; Mastin and Sump.

Minority Report: Without recommendation. Signed by 1 member: Representative Regala.

Staff: Bill Lynch (786-7092).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Ecology. Signed by 19 members: Representatives Huff, Chairman; Alexander, Vice Chairman; Clements, Vice Chairman; Wensman, Vice Chairman; Benson; Carlson; Cooke; Crouse; Grant; Lambert; Linville; Lisk; Mastin; McMorris; Parlette; D. Schmidt; Sehlin; Sheahan and Talcott.

Minority Report: Do not pass. Signed by 11 members: Representatives H. Sommers, Ranking Minority Member; Doumit, Assistant Ranking Minority Member; Gombosky, Assistant Ranking Minority Member; Chopp; Cody; Keiser; Kenney; Kessler; Poulsen; Regala and Tokuda.

Staff: Jeff Olsen (786-7157).

Background: Interties are interconnections between two public water systems which allow water to be delivered or exchanged between those water systems. Interties existing before January 1, 1991, may continue without review unless the Department of Ecology receives complaints that the intertie is impairing other water rights. A 1996 Attorney General's Opinion found that this grandfathering language applied to the amount of water that flowed through the intertie as of 1991 and not the capacity of the intertie. Interties beginning use after January 1, 1991, may be permitted under certain circumstances, including not adversely affecting existing water rights.

Interties may not be used for the development of new sources of supply to meet future demand.

Water rights which have been put to beneficial use may be transferred without a loss of priority if the change can be made without impairing existing rights.

A permit for a water right normally sets forth the timelines for when construction work must begin and be completed on the project for which the permit was issued, as well as when the water must be put to beneficial use. The Department of Ecology issues a water right certificate if the department is satisfied that the water right has been perfected by the water being put to beneficial use. Municipal water rights were historically considered to be perfected in the state when the municipality had the necessary infrastructure (pumps and pipes) in place to provide service, even though the water had not yet been put to beneficial use. There is litigation before the Washington Supreme Court which focuses on whether municipal water rights must be put to beneficial use before they are considered to be perfected.

In general, if a person fails to put all or part of a water right to beneficial use without sufficient cause for five consecutive years, then that water right or portion of water right is deemed to have been relinquished and reverts to the state. "Sufficient cause" is defined as nonuse as a result of drought or other unavailability of water, active service in the United States Armed Forces during a military crises, involuntary service in the United States Armed Forces, the operation of legal proceedings, or federal laws imposing land or water use restrictions either directly or through the landowner's voluntary enrollment in a federal program implementing those laws. Time periods which elapse while an application for transferring a water right to a public water supplier for municipal purposes, and conserved water do not constitute sufficient cause to prevent relinquishment for nonuse of water.

Summary of Bill: An intertie, which was in use prior to January 1, 1991, may be used to its full design or built capacity within the most recently approved retail or wholesale service area without further approval by the Department of Ecology, and without regard to the capacity actually used before January 1, 1991. An intertie which was in use prior to January 1, 1991, however, must be reviewed, analyzed, and approved by the Department of Health in conjunction with the Department of Ecology, and must be in accordance with requirements for coordinated water system plans. In addition, an intertie which was in use prior to January 1, 1991, must undergo environmental review pursuant to the State Environmental Protection Act (SEPA), and be deemed consistent with regional water resource plans.

The prohibition against interties being used to develop new sources of supply to meet future demand for water is deleted. An intertie may be used to develop new sources of supply to meet future demands if the water system or systems receiving water through the intertie efficiently use existing sources of water supply and the provision of water is consistent with local land use plans. A public water system is considered to be efficiently using its existing source of water if it is in full compliance with the Department of Health's conservation guidelines for such systems.

The Department of Ecology may not prohibit or limit a change in place of use for an intertie on the grounds that the holder of the permit has not yet put all of the water authorized in the permit to a beneficial use.

An intertie cannot be used to deliver water on a temporary basis unless the intertie agreement specifies the source of water that will replace the water that is delivered temporarily, and also provides that the receiving system will have replacement water available for delivery before the supplying system terminates delivery. If water is delivered through an intertie on the effective date of this legislation, delivery of water to the receiving system cannot be terminated until the intertie agreement is modified to contain such provisions and replacement water is available.

The instantaneous and annual withdrawal rates specified in a water right certificate are considered to be perfected if water is being provided under a certificated water right, and the water is being provided by a public water system providing water for municipal supply purposes, a federal reclamation project providing water for reclamation purposes, or an irrigation district providing water pursuant to the irrigation district laws. In order for a public water system, federal reclamation project, or irrigation district to perfect the instantaneous and annual withdrawal rates specified in the water right certificate, the purveyor must demonstrate to the Department of Ecology that these rates will be necessary to meet the needs of its users during the most recent projection for a 50-year period.

The definition of what constitutes "sufficient cause" for purposes of finding that the nonuse of a water right does not result in relinquishment of that water right is expanded

to include a lapse of time occurring while a request or application is processed for transferring or changing a water right; as well as the implementation of more efficient practices, technologies, or facilities than what was previously used under the water right.

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Agriculture & Ecology: If specific funding is not provided in the Omnibus Appropriations Act, the bill is null and void.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date Ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Testimony For: (Agriculture & Ecology) This makes use of existing water rights to allow for growth. It adds clarity and certainty to existing rights. The "no-growth" limitation on interties is confusing and doesn't make sense.

(Appropriations) None.

Testimony Against: (Agriculture & Ecology) This is municipal water-spreading. This is too open-ended. Interties provide a reliability purpose, and are not just there for growth. By allowing transfers of water that aren't already being put to beneficial use, it is difficult to assess the impacts on existing water rights. This could impact instream flows and fisheries. Interties need to go through all the statutory steps to see if the transfer is appropriate.

(Appropriations) The bill allows water for municipalities to be transferred, which will result in more lawsuits.

Testified: (Agriculture & Ecology) Jim Miller, city of Everett, (pro); Judy Turpin, WA Environmental Council (con); Josh Bodi, Sierra Club (con); Dawn Vyvyan, Yakima Indian Nation (con); Karla Kay Fullerton, WA Cattlemen's Association (con); and Pat Sumption, Friends of Green River (con).

(Appropriations) John Rosapepe, Sierra Club.