

# SENATE BILL REPORT

## E2SHB 2925

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As Reported By Senate Committee On:  
Agriculture & Environment, February 26, 1998

**Title:** An act relating to water.

**Brief Description:** Changing water provisions.

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

**Brief History:**

**Committee Activity:** Agriculture & Environment: 2/19/98, 2/26/98 [DPA, DNP].

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### SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

**Majority Report:** Do pass as amended.

Signed by Senators Morton, Chair; Swecker, Vice Chair; Oke and Rasmussen.

**Minority Report:** Do not pass.

Signed by Senator Fraser.

**Staff:** Bob Lee (786-7404)

**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.

Water rights held for municipal water supply purposes are exempt from the relinquishment.

**Summary of Amended Bill:** Interties may be used to develop new sources of supply to meet future demands if the water system is making efficient use of existing sources of supply and the use of water is consistent with local land use plans and state-approved water system plans. Compliance with the Department of Health's conservation guidelines is deemed efficient use.

Interties that were in existence or approved as of January 1991 by the Department of Health are to undergo an environmental review and ensure that base flows in affected surface water are retained to protect the quality of the natural environment. Existing instream flow conditions are considered sufficient unless compelling evidence exists otherwise, in which case higher interim flows can be required on an interim basis but only as a condition to the portion of the water right being used at a changed place of use.

The department is not to deny or limit a change in the place of use for an intertie on the basis that the holder of the permit has not put all the water authorized in the permit to beneficial use.

Intertie agreements initiated after the effective date of this bill that transfer water to another utility on a temporary basis must specify the source of replacement water when the temporary water pursuant to the contract is terminated.

Certificated water rights for municipal supply purposes, federal reclamation projects and irrigation districts are to be deemed valid and perfected if that amount will be necessary to accommodate the projected needs of its users during the ensuing 50-year period according to an approved water conservation plan.

Water saved through implementation of practices or technologies, or the installation or repair of facilities implemented after 1991 are included in the definition of "sufficient cause" and thus exempt from relinquishment. Also included in the definition of "sufficient cause" is the lapse of time during which a request for application for the transfer of a water right is being transferred.

**Amended Bill Compared to Second Substitute Bill:** Entities that supply water pursuant an intertie agreement on a temporary basis are not required to continue supplying water after the term of the agreement expires if the receiving utility does not have a replacement supply.

An instream flow that is determined by compelling evidence to be insufficient may be increased on an interim basis but applies only to the portion of the water right that is being used in the changed place of use.

The requirement that water must continue to be supplied to a receiving entity despite the expiration of the intertie contract applies only to contracts entered after the effective date of this bill.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Water rights held for municipal purposes that are currently not being used by the holder of the water right should be allowed to be transferred to other water utilities that are in short supply. There is a need to supply the water for the expected growth that is being planned in accordance with the Growth Management Act.

**Testimony Against:** There is a municipal water work group that is working toward reaching consensus on this issue that should be allowed to continue to work. Allowing the transfer of water that is surplus to the current use of one entity to another entity may affect instream flows and associated fish, some of which are likely to be listed under the federal Endangered Species Act. Municipal uses should not be treated differently from other water right uses.

**Testified:** PRO: Jeff Johnson, Water Co-Op of Pierce County; Mike Schwisow, Washington State Water Resources; Tony Meinhardt, Sewer and Water Districts; Jim Miller, city of Everett; Steve Lindstrom, Sno-King Water Districts; CON: Judy Turpin, Washington Environmental Council; John Rosapepe, Sierra Club; Karla Kay Fullerton, Washington Cattlemen's Association (concerns).