
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2925

State of Washington

55th Legislature

1998 Regular Session

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

Read first time 02/07/98. Referred to Committee on .

1 AN ACT Relating to water; amending RCW 90.03.383, 90.03.330, and
2 90.14.140; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
5 as follows:

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

1 subsection (3) of this section. The legislature further finds it in
2 the public interest to develop a coordinated process to review
3 proposals for interties commencing use after January 1, 1991.

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

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

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

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

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

22 (b) An intertie meeting the requirements of this subsection (3) for
23 modifying the place of use description in a water right permit,
24 certificate, or claim may be used to its full design or built capacity
25 within the most recently approved retail or wholesale or retail and
26 wholesale service area, without further approval under this section and
27 without regard to the capacity actually used before January 1, 1991.
28 Any intertie meeting the requirements of this section, however, must be
29 reviewed, analyzed, and approved by the department of health in
30 collaboration with the department of ecology, and in accordance with
31 coordinated water system plan requirements under chapter 70.116 RCW.
32 In addition, any intertie meeting the requirements of this subsection
33 must undergo environmental review in accordance with chapter 43.21C
34 RCW.

35 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
36 exchange, acquisition, or delivery of water through interties approved
37 by the department of health commencing use after January 1, 1991, shall
38 be permitted when the intertie improves overall system reliability,
39 enhances the manageability of the systems, provides opportunities for

1 conjunctive use, or delays or avoids the need to develop new water
2 sources, and otherwise meets the requirements of this section, provided
3 that each public water system's water use shall not exceed the
4 instantaneous or annual withdrawal rate specified in its water right
5 authorization, shall not adversely affect existing water rights, and
6 shall not be inconsistent with state-approved plans such as water
7 system plans or other plans which include specific proposals for
8 construction of interties. Interties commencing use after January 1,
9 1991, (~~shall not be inconsistent~~) must be deemed consistent with
10 regional water resource plans developed pursuant to chapter 90.54 RCW
11 or chapter 90.82 RCW.

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

23 (6) The department of health shall be responsible for review and
24 approval of proposals for new interties. In its review the department
25 of health shall determine whether the intertie satisfies the criteria
26 of subsection (4) of this section, with the exception of water rights
27 considerations, which are the responsibility of the department of
28 ecology, and shall determine whether the intertie is necessary to
29 address emergent public health or safety concerns associated with
30 public water supply.

31 (7) If the intertie is determined by the department of health to be
32 necessary to address emergent public health or safety concerns
33 associated with public water supply, the public water system shall
34 amend its water system plan as required and shall file an application
35 with the department of ecology to change its existing water right to
36 reflect the proposed use of the water as described in the approved
37 water system plan. The department of ecology shall process the
38 application for change pursuant to RCW 90.03.380 or 90.44.100 as
39 appropriate, except that, notwithstanding the requirements of those

1 sections regarding notice and protest periods, applicants shall be
2 required to publish notice one time, and the comment period shall be
3 fifteen days from the date of publication of the notice. Within sixty
4 days of receiving the application, the department of ecology shall
5 issue findings and advise the department of health if existing water
6 rights are determined to be adversely affected. If no determination is
7 provided by the department of ecology within the sixty-day period, the
8 department of health shall proceed as if existing rights are not
9 adversely affected by the proposed intertie. The department of ecology
10 may obtain an extension of the sixty-day period by submitting written
11 notice to the department of health and to the applicant indicating a
12 definite date by which its determination will be made. No additional
13 extensions shall be granted, and in no event shall the total review
14 period for the department of ecology exceed one hundred eighty days.

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

35 (9) The department of health may approve plans containing intertie
36 proposals prior to the department of ecology's decision on the water
37 right application for change in place of use. However, notwithstanding
38 such approval, construction work on the intertie shall not begin until

1 the department of ecology issues the appropriate water right document
2 to the applicant consistent with the approved plan.

3 (10) An intertie shall not be used to deliver a primary or
4 secondary supply of water to a receiving system on a temporary basis
5 unless the terms of the intertie agreement specify the source of the
6 water that will be used by the receiving system to replace the water
7 delivered on the temporary basis and provide that replacement water
8 will be available for delivery to or use by the receiving system before
9 delivery by the supplying system under the agreement is terminated.
10 However, if a primary or secondary supply of water is delivered to a
11 receiving system on a temporary basis by means of an intertie on the
12 effective date of this subsection and the agreement between the
13 supplying system and receiving system does not contain such provision
14 for such a replacement supply of water for the receiving system, the
15 delivery of the water by the supplying system to the receiving system
16 shall not be terminated until the agreement is modified to establish
17 such provisions and such replacement water is available for delivery to
18 or use by the receiving system.

19 **Sec. 2.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read
20 as follows:

21 (1) Upon a showing satisfactory to the department that any
22 appropriation has been perfected in accordance with the provisions of
23 this chapter, it shall be the duty of the department to issue to the
24 applicant a certificate stating such facts in a form to be prescribed
25 by him, and such certificate shall thereupon be recorded with the
26 department. Any original water right certificate issued, as provided
27 by this chapter, shall be recorded with the department and thereafter,
28 at the expense of the party receiving the same, be by the department
29 transmitted to the county auditor of the county or counties where the
30 distributing system or any part thereof is located, and be recorded in
31 the office of such county auditor, and thereafter be transmitted to the
32 owner thereof.

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

37 (3) If a federal reclamation project is providing water for
38 reclamation purposes under a certificated water right, the

1 instantaneous and annual withdrawal rates specified in the certificate
2 are deemed valid and perfected.

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

7 (5) Notwithstanding any other provisions of this section, the
8 public water system, federal reclamation project, or irrigation
9 district must demonstrate to the department of ecology in accordance
10 with water system plans and reviews pursuant to chapter 70.119A or
11 87.03 RCW, that the instantaneous and annual withdrawal rates will be
12 necessary in order to accommodate the needs of its users during the
13 most recent projection for a fifty-year period.

14 **Sec. 3.** RCW 90.14.140 and 1987 c 125 s 1 are each amended to read
15 as follows:

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

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

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

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

24 (d) The operation of legal proceedings;

25 (e) Federal laws imposing land or water use restrictions either
26 directly or through the voluntary enrollment of a landowner in a
27 federal program implementing those laws, or acreage limitations, or
28 production quotas;

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

31 (g) The implementation of practices or technologies or the
32 installation or repair of facilities, including but not limited to
33 water conveyance practices, technologies, or facilities, that are more
34 efficient or more water use efficient than practices, technologies, or
35 facilities previously used under the water right.

36 (2) Notwithstanding any other provisions of RCW 90.14.130 through
37 90.14.180, there shall be no relinquishment of any water right:

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

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

8 (c) If such right is claimed for a determined future development to
9 take place ((either)) at any time within fifteen years of either July
10 1, 1967, or the most recent beneficial use of the water right,
11 whichever date is later, or

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

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

16 NEW SECTION. **Sec. 4.** If specific funding for the purposes of this
17 act, referencing this act by bill or chapter number, is not provided by
18 June 30, 1998, in the omnibus appropriations act, this act is null and
19 void.

--- END ---