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SECOND SUBSTITUTE HOUSE BILL 2925

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

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

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

21 (3) If a federal reclamation project is providing water for  
22 reclamation purposes under a certificated water right, the  
23 instantaneous and annual withdrawal rates specified in the certificate  
24 are deemed valid and perfected.

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

29 (5) Notwithstanding any other provisions of this section, the  
30 public water system, federal reclamation project, or irrigation  
31 district must demonstrate to the department of ecology in accordance  
32 with water system plans and reviews pursuant to chapter 70.119A or  
33 87.03 RCW, that the instantaneous and annual withdrawal rates will be  
34 necessary in order to accommodate the needs of its users during the  
35 most recent projection for a fifty-year period.

36 **Sec. 3.** 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 of practices or technologies or the  
17 installation or repair of facilities, including but not limited to  
18 water conveyance practices, technologies, or facilities, that are more  
19 efficient or 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 such right is claimed for a determined future development to  
31 take place ((either)) at any time within fifteen years of either July  
32 1, 1967, or the most recent beneficial use of the water right,  
33 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        NEW SECTION.   **Sec. 4.**   If specific funding for the purposes of this  
2 act, referencing this act by bill or chapter number, is not provided by  
3 June 30, 1998, in the omnibus appropriations act, this act is null and  
4 void.

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