
SENATE BILL 5992

State of Washington

55th Legislature

1997 Regular Session

By Senators Swecker and Rasmussen

Read first time 02/25/97. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to municipal water rights transfer authority and
2 relinquishment protection; and amending RCW 90.03.383 and 90.14.140.

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 pipes, valves, pumps, and other related
7 facilities necessary to convey a maximum quantity of water, that is
8 capacity, and providing interconnections between public water systems
9 permitting exchange, acquisition, or delivery of wholesale and retail
10 water between those systems for other than emergency supply purposes,
11 where such exchange, acquisition, or delivery is within established
12 instantaneous and annual withdrawal rates specified in the systems'
13 existing water right permits or certificates, or contained in claims
14 filed pursuant to chapter 90.14 RCW, and which results in better
15 management of public water supply consistent with existing rights and
16 obligations. Interties include interconnections between public water
17 systems permitting exchange, acquisition, or delivery of water to serve
18 as primary or secondary sources of supply(~~(, but do not include~~
19 development of new sources of supply to meet future demand)).

20 "Interties" include interconnections between public water systems
21 permitting exchange or delivery of water to serve as primary or
22 secondary sources of supply, and include development of new sources of
23 supply to meet future demand, if the water system or systems receiving
24 water through the intertie are making efficient use of existing sources
25 of supply and if the provision of water through the intertie is
26 consistent with local land use plans. Full compliance with the state's
27 adopted conservation guidelines will be deemed efficient use.

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

36 (3)(a) Public water systems with interties existing and in use as
37 of January 1, 1991, or that have received written approval from the
38 department of health prior to that date, shall file written notice of
39 those interties with the department of health and the department of

1 ecology. The notice may be incorporated into the public water system's
2 five-year update of its water system plan, but shall be filed no later
3 than June 30, 1996. The notice shall identify the location of the
4 intertie; the dates of its first use; the purpose, capacity, and
5 current use; the intertie agreement of the parties and the service
6 areas assigned; and other information reasonably necessary to modify
7 the public water system's water right ((permit)). Notwithstanding the
8 provisions of RCW 90.03.380 and 90.44.100, for public water systems
9 with interties existing and in use or with written approval as of
10 January 1, 1991, the department of ecology, upon receipt of notice
11 meeting the requirements of this subsection, shall, as soon as
12 practicable, modify the place of use descriptions in the water right
13 permits, certificates, or claims to reflect the actual or intended
14 place of use to be served through such interties, provided that the
15 place of use is within service area designations established in a water
16 system plan approved pursuant to chapter 43.20 RCW, or a coordinated
17 water system plan approved pursuant to chapter 70.116 RCW, and further
18 provided that the water used is within the instantaneous and annual
19 withdrawal rates specified in the water rights ((permit)) and that no
20 outstanding complaints of impairment to existing water rights have been
21 filed with the department of ecology prior to September 1, 1991. Where
22 such complaints of impairment have been received, the department of
23 ecology shall make all reasonable efforts to resolve them in a timely
24 manner through agreement of the parties or through available
25 administrative remedies.

26 (b) Interties meeting the requirements of this subsection for
27 modifying the place of use descriptions in the water right permits,
28 certificates, or claims can be used to their full design or built
29 capacity within the most recent approved retail or wholesale service
30 area, with no further approvals under this section, regardless of
31 actual capacity put to use before January 1, 1991.

32 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
33 exchange, acquisition, or delivery of water through interties approved
34 by the department of health commencing use after January 1, 1991, shall
35 be permitted when the intertie improves overall system reliability,
36 enhances the manageability of the systems, provides opportunities for
37 conjunctive use, or delays or avoids the need to develop new water
38 sources, and otherwise meets the requirements of this section, provided
39 that each public water system's water use shall not exceed the

1 instantaneous or annual withdrawal rate specified in its water right
2 authorization, shall not adversely affect existing water rights, and
3 shall not be inconsistent with state-approved plans such as water
4 system plans or other plans which include specific proposals for
5 construction of interties. Interties approved and commencing use after
6 January 1, 1991, shall not be inconsistent with regional water resource
7 plans developed pursuant to chapter 90.54 RCW.

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

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

27 (7) If the intertie is determined by the department of health to be
28 necessary to address emergent public health or safety concerns
29 associated with public water supply, the public water system shall
30 amend its water system plan as required and shall file an application
31 with the department of ecology to change its existing water right to
32 reflect the proposed use of the water as described in the approved
33 water system plan. The department of ecology shall process the
34 application for change pursuant to RCW 90.03.380 or 90.44.100 as
35 appropriate, except that, notwithstanding the requirements of those
36 sections regarding notice and protest periods, applicants shall be
37 required to publish notice one time, and the comment period shall be
38 fifteen days from the date of publication of the notice. Within sixty
39 days of receiving the application, the department of ecology shall

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

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

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

36 (10) The annual and instantaneous withdrawal rates specified within
37 the certificated water rights, claims, or permits held by a public
38 water system or regional water system providing water for municipal
39 supply purposes by use of interties or other delivery system, may be

1 used throughout the public water system's or regional water supply
2 system's wholesale and retail service areas as shown in the most
3 recently approved water system plan adopted under chapters 43.20 and
4 70.116 RCW.

5 **Sec. 2.** RCW 90.14.140 and 1987 c 125 s 1 are each amended to read
6 as follows:

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

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

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

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

15 (d) The operation of legal proceedings;

16 (e) Federal laws imposing land or water use restrictions either
17 directly or through the voluntary enrollment of a landowner in a
18 federal program implementing those laws, or acreage limitations, or
19 production quotas;

20 (f) The time to process the transferring of a right to a public
21 water supplier for municipal purposes;

22 (g) Conservation or an increase in water use efficiency.

23 (2) Notwithstanding any other provisions of RCW 90.14.130 through
24 90.14.180, there shall be no relinquishment of any water right, which
25 for the purpose of this section shall be defined to mean a certificate
26 of perfection, water right permit, a claim filed with the department,
27 or an inchoate right:

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

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

35 (c) If such right is claimed for a determined future development to
36 take place ((either)) at any time within fifteen years of either July
37 1, 1967, or the most recent beneficial use of the water right,
38 whichever date is later, or

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

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

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