
SUBSTITUTE HOUSE BILL 2185

State of Washington

56th Legislature

1999 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Linville, G. Chandler and Grant)

Read first time 03/02/1999.

1 AN ACT Relating to water rights; amending RCW 90.03.383; adding a
2 new section to chapter 43.20 RCW; adding new sections to chapter 90.03
3 RCW; and adding new sections to chapter 90.44 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.20 RCW
6 to read as follows:

7 The department of health shall adopt as rules conservation and
8 efficiency standards and safeguards that shall apply to the
9 transmission of water to and the distribution of water by a public
10 water system receiving water through an intertie approved after the
11 effective date of this section. The standards shall apply to a public
12 water system receiving such water if the public water system has at
13 least one thousand service connections.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03 RCW
15 to read as follows:

16 If a water right certificate was issued by the department of
17 ecology before the effective date of this section to a public water
18 system and, at the time the certificate was issued, the amount of water

1 listed on the certificate as being subject to diversion for use under
2 the certificate included both amounts beneficially used by the date of
3 the issuance and amounts not yet beneficially used by that date, the
4 water right represented by the certificate is for the total of both
5 such amounts. Any amounts not yet beneficially used under such a
6 certificate by the effective date of this section are governed by the
7 inchoate portion of the water right and remain available to a public
8 water system holding the certificated right for further development and
9 for transfer or change for further development. The place of use for
10 the water right represented by such a certificate is the place of use
11 listed on the certificate or the place of use identified in the water
12 system plan approved by the department of health on the effective date
13 of this section for the public water system, whichever document
14 identifies a larger service area for the public water system.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 90.03 RCW
16 to read as follows:

17 The beneficial use of water governed by an inchoate portion of a
18 water right described in section 2 or 5 of this act that begins on or
19 after the effective date of this section is subject to the following
20 conditions:

21 (1) The beneficial use shall be consistent with any comprehensive
22 land use plan adopted under chapter 36.70A RCW for the area in which
23 the beneficial use takes place or, if comprehensive land use planning
24 has not been conducted for that area under chapter 36.70A RCW, the
25 beneficial use shall be consistent with any comprehensive plan adopted
26 under chapter 36.70 RCW for the area; and

27 (2) If a public water system applies for a transfer, change, or
28 amendment to an inchoate portion of its water right to provide for the
29 initial beneficial use of water governed by the inchoate portion of the
30 right, the public water system and the department shall study the
31 effects of the transfer, change, or amendment on habitat for fish
32 stocks listed or proposed for listing as threatened or endangered under
33 the federal endangered species act or as critical or depressed in the
34 state's salmon and steelhead stock inventory. If the proposed use
35 would adversely impact such habitat and the public water system does
36 not withdraw the application, the system shall develop a plan for
37 mitigating the adverse impacts and for monitoring the effectiveness of
38 the mitigation effort. Any such mitigation shall be conducted

1 concurrently with the transfer, change, or amendment of the right.
2 This subsection includes, but is not limited to, any change of the
3 place of use for such an inchoate portion of a water right made through
4 an intertie.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 90.03 RCW
6 to read as follows:

7 (1) The department may not approve any transfer or change of a
8 water right held by a public water system that changes the place of use
9 for the right for beneficial use by a public water system unless the
10 conservation and efficiency measures and safeguards for the
11 distribution of water in the new place of use are at least as stringent
12 as the conservation and efficiency measures and safeguards existing for
13 the distribution of water by the system in the place of use for the
14 original water right before the transfer or change.

15 (2) This subsection applies to any transfer or change of a water
16 right that changes the place of use of water so that it may be
17 beneficially used by a public water system with one thousand or more
18 service connections. The department of ecology may not approve such a
19 transfer or change for a water right unless the system for distributing
20 water in the new place of use satisfies the standards and safeguards
21 adopted by the department of health under section 1 of this act.

22 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.44 RCW
23 to read as follows:

24 If a water right certificate was issued by the department of
25 ecology before the effective date of this section to a public water
26 system and, at the time the certificate was issued, the amount of water
27 listed on the certificate as being subject to withdrawal for use under
28 the certificate included both amounts beneficially used by the date of
29 the issuance and amounts not yet beneficially used by that date, the
30 water right represented by the certificate is for the total of both
31 such amounts. Any amounts not yet beneficially used under such a
32 certificate by the effective date of this section are governed by the
33 inchoate portion of the water right and remain available to a public
34 water system holding the certificated right for further development and
35 for further development through the amendment of the right. The place
36 of use for the water right represented by such a certificate is the
37 place of use listed on the certificate or the place of use identified

1 in the water system plan approved by the department of health on the
2 effective date of this section for the public water system, whichever
3 document identifies a larger service area for the public water system.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.44 RCW
5 to read as follows:

6 (1) The department may not approve any amendment of a water right
7 held by a public water system that changes the place of use for the
8 right for beneficial use by a public water system unless the
9 conservation and efficiency measures and safeguards for the
10 distribution of water in the new place of use are at least as stringent
11 as the conservation and efficiency measures and safeguards existing for
12 the distribution of water by the system in the place of use for the
13 original water right before the amendment.

14 (2) This subsection applies to any amendment of a water right that
15 changes the place of use of water so that it may be beneficially used
16 by a public water system with one thousand or more service connections.
17 The department of ecology may not approve such an amendment for a water
18 right unless the system for distributing water in the new place of use
19 satisfies the standards and safeguards adopted by the department of
20 health under section 1 of this act.

21 **Sec. 7.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read
22 as follows:

23 (1) The legislature recognizes the value of interties for improving
24 the reliability of public water systems, enhancing their management,
25 and more efficiently utilizing the increasingly limited resource.
26 Given the continued growth in the most populous areas of the state, the
27 increased complexity of public water supply management, and the trend
28 toward regional planning and regional solutions to resource issues,
29 interconnections of public water systems through interties provide a
30 valuable tool to ensure reliable public water supplies for the citizens
31 of the state. Public water systems have been encouraged in the past to
32 utilize interties to achieve public health and resource management
33 objectives. The legislature finds that it is in the public interest to
34 recognize interties existing and in use as of January 1, 1991, and to
35 have associated water rights modified by the department of ecology to
36 reflect current use of water through those interties, pursuant to
37 subsection (3) of this section. The legislature further finds it in

1 the public interest to develop a coordinated process to review
2 proposals for interties commencing use after January 1, 1991.

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

5 (a) "Interties" are interconnections between public water systems
6 permitting exchange, acquisition, or delivery of water between those
7 systems for other than emergency supply purposes, where such exchange
8 or delivery is within established instantaneous and annual withdrawal
9 rates specified in the systems' existing water right permits or
10 certificates, or contained in claims filed pursuant to chapter 90.14
11 RCW, and which results in better management of public water supply
12 consistent with existing rights and obligations. Interties include
13 interconnections between public water systems permitting exchange,
14 acquisition, or delivery of water to serve as primary or secondary
15 sources of supply(~~(, but do not include development of new sources of~~
16 ~~supply to meet future demand)~~).

17 (b) "Service area" is the area designated in a water system plan or
18 a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW
19 respectively. When a public water system does not have a designated
20 service area subject to the approval process of those chapters, the
21 service area shall be the designated place of use contained in the
22 water right permit or certificate, or contained in the claim filed
23 pursuant to chapter 90.14 RCW.

24 (3) Public water systems with interties existing and in use as of
25 January 1, 1991, or that have received written approval from the
26 department of health prior to that date, shall file written notice of
27 those interties with the department of health and the department of
28 ecology. The notice may be incorporated into the public water system's
29 five-year update of its water system plan, but shall be filed no later
30 than June 30, 1996. The notice shall identify the location of the
31 intertie; the dates of its first use; the purpose, capacity, and
32 current use; the intertie agreement of the parties and the service
33 areas assigned; and other information reasonably necessary to modify
34 the water right permit. Notwithstanding the provisions of RCW
35 90.03.380 and 90.44.100, for public water systems with interties
36 existing and in use as of January 1, 1991, the department of ecology,
37 upon receipt of notice meeting the requirements of this subsection,
38 shall, as soon as practicable, modify the place of use descriptions in
39 the water right permits, certificates, or claims to reflect the actual

1 use through such interties, provided that the place of use is within
2 service area designations established in a water system plan approved
3 pursuant to chapter 43.20 RCW, or a coordinated water system plan
4 approved pursuant to chapter 70.116 RCW, and further provided that the
5 water used is within the instantaneous and annual withdrawal rates
6 specified in the water right permit and that no outstanding complaints
7 of impairment to existing water rights have been filed with the
8 department of ecology prior to September 1, 1991. Where such
9 complaints of impairment have been received, the department of ecology
10 shall make all reasonable efforts to resolve them in a timely manner
11 through agreement of the parties or through available administrative
12 remedies.

13 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
14 exchange or delivery of water through interties commencing use after
15 January 1, 1991, shall be permitted when the intertie improves overall
16 system reliability, enhances the manageability of the systems, provides
17 opportunities for conjunctive use, or delays or avoids the need to
18 develop new water sources, and otherwise meets the requirements of this
19 section, provided that each public water system's water use shall not
20 exceed the instantaneous or annual withdrawal rate specified in its
21 water right authorization, shall not adversely affect existing water
22 rights, and shall not be inconsistent with state-approved plans such as
23 water system plans or other plans which include specific proposals for
24 construction of interties. Interties commencing use after January 1,
25 1991, shall not be inconsistent with regional water resource plans
26 developed pursuant to chapter 90.54 RCW.

27 (5) For public water systems subject to the approval process of
28 chapter 43.20 RCW or chapter 70.116 RCW, proposals for interties
29 commencing use after January 1, 1991, shall be incorporated into water
30 system plans pursuant to chapter 43.20 RCW or coordinated water system
31 plans pursuant to chapter 70.116 RCW and submitted to the department of
32 health and the department of ecology for review and approval as
33 provided for in subsections (5) through (9) of this section. The plan
34 shall state how the proposed intertie will improve overall system
35 reliability, enhance the manageability of the systems, provide
36 opportunities for conjunctive use, or delay or avoid the need to
37 develop new water sources.

38 (6) The department of health shall be responsible for review and
39 approval of proposals for new interties. In its review the department

1 of health shall determine whether the intertie satisfies the criteria
2 of subsection (4) of this section, with the exception of water rights
3 considerations, which are the responsibility of the department of
4 ecology, and shall determine whether the intertie is necessary to
5 address emergent public health or safety concerns associated with
6 public water supply.

7 (7) If the intertie is determined by the department of health to be
8 necessary to address emergent public health or safety concerns
9 associated with public water supply, the public water system shall
10 amend its water system plan as required and shall file an application
11 with the department of ecology to change its existing water right to
12 reflect the proposed use of the water as described in the approved
13 water system plan. The department of ecology shall process the
14 application for change pursuant to RCW 90.03.380 or 90.44.100 as
15 appropriate, except that, notwithstanding the requirements of those
16 sections regarding notice and protest periods, applicants shall be
17 required to publish notice one time, and the comment period shall be
18 fifteen days from the date of publication of the notice. Within sixty
19 days of receiving the application, the department of ecology shall
20 issue findings and advise the department of health if existing water
21 rights are determined to be adversely affected. If no determination is
22 provided by the department of ecology within the sixty-day period, the
23 department of health shall proceed as if existing rights are not
24 adversely affected by the proposed intertie. The department of ecology
25 may obtain an extension of the sixty-day period by submitting written
26 notice to the department of health and to the applicant indicating a
27 definite date by which its determination will be made. No additional
28 extensions shall be granted, and in no event shall the total review
29 period for the department of ecology exceed one hundred eighty days.

30 (8) If the department of health determines the proposed intertie
31 appears to meet the requirements of subsection (4) of this section but
32 is not necessary to address emergent public health or safety concerns
33 associated with public water supply, the department of health shall
34 instruct the applicant to submit to the department of ecology an
35 application for change to the underlying water right or claim as
36 necessary to reflect the new place of use. The department of ecology
37 shall consider the applications pursuant to the provisions of RCW
38 90.03.380 and 90.44.100 as appropriate. If in its review of proposed
39 interties and associated water rights the department of ecology

1 determines that additional information is required to act on the
2 application, the department may request applicants to provide
3 information necessary for its decision, consistent with agency rules
4 and written guidelines. Parties disagreeing with the decision of the
5 department of ecology on the application for change in place of use may
6 appeal the decision to the pollution control hearings board.

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

13 (10) An intertie may not be used to deliver a primary or secondary
14 supply of water to a receiving system on a temporary basis unless the
15 terms of the intertie agreement specify the source of the water that
16 will be used by the receiving system to replace the water delivered on
17 the temporary basis, and provide that replacement water will be
18 available for delivery to, or use by, the receiving system before
19 delivery by the supplying system under the agreement is terminated.
20 However, if a primary or secondary supply of water is delivered to a
21 receiving system on a temporary basis by means of an intertie on the
22 effective date of this section and the agreement between the supplying
23 system and receiving system does not contain such provision for such a
24 replacement supply of water for the receiving system, the delivery of
25 the water by the supplying system to the receiving system may not be
26 terminated until the agreement is modified to establish such
27 provisions, and such replacement water is available for delivery to or
28 use by the receiving system.

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