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HOUSE BILL 1876

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By Representatives Linville, G. Chandler, Grant, Doumit, Gombosky, Lovick, O'Brien, Hunt, Wood, Edmonds, Jackley and Santos

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1 AN ACT Relating to public water systems; amending RCW 90.03.383;  
2 and adding a new section to chapter 43.20 RCW.

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

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

6 (1)(a) Each year, the department of health shall determine the  
7 volume of water annually withdrawn by each public water system with one  
8 thousand or more service connections and shall determine the annual  
9 average amount of water withdrawn per service connection in the system.  
10 The secretary of health may adjust the average as described in  
11 subsection (2) of this section. The department shall group the systems  
12 by geographic areas with similar climatological characteristics and,  
13 using these averages and adjusted averages as appropriate, shall  
14 determine the annual average amount of water withdrawn per service  
15 connection in each such group. This average for the public water  
16 systems in each geographic group constitutes the water withdrawal  
17 target rate for the group. The department shall publish these target  
18 rates annually.

1 (b) Each water system plan of a public water system with one  
2 thousand or more connections submitted to the department of health for  
3 approval shall be for a six-year planning period. Beginning January 1,  
4 2004, a water system plan for a public water system with one thousand  
5 or more service connections shall contain provisions identifying how  
6 the annual average amount of water withdrawn per service connection by  
7 the system, as adjusted under subsection (2) of this section, will  
8 meet, during the six-year life of the plan, a water withdrawal target  
9 rate published under (a) of this subsection for the system's geographic  
10 group for either of the two calendar years preceding the system's  
11 submission of the plan to the department of health for approval. The  
12 department of health shall not approve a water system plan for such a  
13 system unless the plan identifies how the system will meet the water  
14 withdrawal target rate during the six-year life of the plan. If a  
15 water system plan for such water system has been approved by the  
16 department as satisfying the requirements of this section, the  
17 department shall not approve a subsequent water system plan for such  
18 system until the withdrawal target rate of the approved plan has been  
19 met by the system.

20 (2) If the secretary of health determines that the use of water  
21 provided by a public water system is dominated by one or more very  
22 large commercial or industrial users such that the annual average of  
23 the amount of water withdrawn per service connection by the system  
24 calculated by the department under subsection (1)(a) of this section is  
25 quite different than it would be, considering water use rates by each  
26 category of use, if the commercial or industrial water use were not so  
27 disproportionate to other uses, the secretary may adjust the annual  
28 average calculated for the water system to compensate for the  
29 disproportionate use. The secretary shall adopt rules identifying the  
30 circumstances under which such adjustments may be made and how they may  
31 be made.

32 (3) The department of health shall provide enhanced technical  
33 assistance to public water systems that are developing water system  
34 plans to meet water withdrawal target rates. The objective of the  
35 enhanced support is to assist the systems in identifying and evaluating  
36 tools and techniques that might be used to meet the target rates.

37 (4) For the purposes of this section, a public water system that  
38 achieves a water withdrawal rate under which the annual average of the  
39 amount of water withdrawn per service connection by the system is equal

1 to or less than the water withdrawal target rate applicable to the  
2 system's water system plan has achieved the water withdrawal target  
3 rate applicable to the plan. Similarly, a plan for achieving an annual  
4 average of the amount of water withdrawn per service connection that is  
5 equal to or less than the water withdrawal target rate applicable to  
6 the plan is a plan for achieving the water withdrawal target rate  
7 applicable to the plan.

8 (5) For the purposes of subsections (1) and (2) of this section, a  
9 water "withdrawal" means both a water diversion and a water withdrawal  
10 and water "withdrawn" refers to both water diverted and water  
11 withdrawn.

12 **Sec. 2.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to read  
13 as follows:

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

31 (2) For the purposes of this section, the following definitions  
32 shall apply:

33 (a) "Interties" are interconnections between public water systems  
34 permitting exchange, acquisition, or delivery of water between those  
35 systems for other than emergency supply purposes, where such exchange  
36 or delivery is within established instantaneous and annual withdrawal  
37 rates specified in the systems' existing water right permits or  
38 certificates, or contained in claims filed pursuant to chapter 90.14

1 RCW, and which results in better management of public water supply  
2 consistent with existing rights and obligations. Interties include  
3 interconnections between public water systems permitting exchange,  
4 acquisition, or delivery of water to serve as primary or secondary  
5 sources of supply(~~(, but do not include development of new sources of~~  
6 ~~supply to meet future demand)~~).

7 (b) "Service area" is the area designated in a water system plan or  
8 a coordinated water system plan pursuant to chapter 43.20 or 70.116 RCW  
9 respectively. When a public water system does not have a designated  
10 service area subject to the approval process of those chapters, the  
11 service area shall be the designated place of use contained in the  
12 water right permit or certificate, or contained in the claim filed  
13 pursuant to chapter 90.14 RCW.

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

1 through agreement of the parties or through available administrative  
2 remedies.

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

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

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

36 (7) If the intertie is determined by the department of health to be  
37 necessary to address emergent public health or safety concerns  
38 associated with public water supply, the public water system shall  
39 amend its water system plan as required and shall file an application

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

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

36 (9) The department of health may approve plans containing intertie  
37 proposals prior to the department of ecology's decision on the water  
38 right application for change in place of use. However, notwithstanding  
39 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 may not be used to deliver a primary or secondary  
4 supply of water to a receiving system on a temporary basis unless the  
5 terms of the intertie agreement specify the source of the water that  
6 will be used by the receiving system to replace the water delivered on  
7 the temporary basis, and provide that replacement water will be  
8 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 section and the agreement between the supplying  
13 system and receiving system does not contain such provision for such a  
14 replacement supply of water for the receiving system, the delivery of  
15 the water by the supplying system to the receiving system may not be  
16 terminated until the agreement is modified to establish such  
17 provisions, and such replacement water is available for delivery to or  
18 use by the receiving system.

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