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**SUBSTITUTE SENATE BILL 6140**

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**State of Washington**

**55th Legislature**

**1998 Regular Session**

**By** Senate Committee on Agriculture & Environment (originally sponsored by Senators Morton, Rasmussen, Winsley, Goings and Schow)

Read first time 02/06/98.

1 AN ACT Relating to water rights; and amending RCW 90.03.383 and  
2 90.03.290.

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 or delivery of water between those systems for  
8 other than emergency supply purposes, where such exchange or delivery  
9 is within established instantaneous and annual withdrawal rates  
10 specified in the systems' existing water right permits or certificates,  
11 or contained in claims filed pursuant to chapter 90.14 RCW, and which  
12 results in better management of public water supply consistent with  
13 existing rights and obligations. Interties include interconnections  
14 between public water systems permitting exchange or delivery of water  
15 to serve as primary or secondary sources of supply, but do not include  
16 development of new sources of 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)) a supplying public water system's water  
20 use shall not exceed the instantaneous or annual withdrawal rate  
21 specified in its water right authorization, shall not adversely affect  
22 existing water rights, and shall not be inconsistent with state-  
23 approved plans such as water system plans or other plans which include  
24 specific proposals for construction of interties. A receiving public  
25 water system's use may exceed its water right authorization if the  
26 receiving public water system's withdrawal does not exceed the  
27 instantaneous or annual withdrawal rate specified in the receiving  
28 public water system's water right authorization. Interties commencing  
29 use after January 1, 1991, shall not be inconsistent with regional  
30 water resource plans developed pursuant to chapter 90.54 RCW.

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

1 opportunities for conjunctive use, or delay or avoid the need to  
2 develop new water sources.

3 (6) The department of health shall be responsible for review and  
4 approval of proposals for new interties. In its review the department  
5 of health shall determine whether the intertie satisfies the criteria  
6 of subsection (4) of this section, with the exception of water rights  
7 considerations, which are the responsibility of the department of  
8 ecology, ~~((and))~~ shall determine whether the intertie is necessary to  
9 address emergent public health or safety concerns associated with  
10 public water supply, and shall determine whether long-term supply is  
11 addressed in the intertie agreement between the systems.

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

35 (8) If the department of health determines the proposed intertie  
36 appears to meet the requirements of subsection (4) of this section but  
37 is not necessary to address emergent public health or safety concerns  
38 associated with public water supply, the department of health shall  
39 instruct the applicant to submit to the department of ecology an

1 application for change to the underlying water right or claim as  
2 necessary to reflect the new place of use. The department of ecology  
3 shall consider the applications pursuant to the provisions of RCW  
4 90.03.380 and 90.44.100 as appropriate. If in its review of proposed  
5 interties and associated water rights the department of ecology  
6 determines that additional information is required to act on the  
7 application, the department may request applicants to provide  
8 information necessary for its decision, consistent with agency rules  
9 and written guidelines. Parties disagreeing with the decision of the  
10 department of ecology on the application for change in place of use may  
11 appeal the decision to the pollution control hearings board.

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

18 **Sec. 2.** RCW 90.03.290 and 1994 c 264 s 84 are each amended to read  
19 as follows:

20 When an application complying with the provisions of this chapter  
21 and with the rules (~~and regulations~~) of the department has been  
22 filed, the same shall be placed on record with the department, and it  
23 shall be its duty to investigate the application, and determine what  
24 water, if any, is available for appropriation, and find and determine  
25 to what beneficial use or uses it can be applied. If it is proposed to  
26 appropriate water for irrigation purposes, the department shall  
27 investigate, determine and find what lands are capable of irrigation by  
28 means of water found available for appropriation. If it is proposed to  
29 appropriate water for the purpose of power development, the department  
30 shall investigate, determine and find whether the proposed development  
31 is likely to prove detrimental to the public interest, having in mind  
32 the highest feasible use of the waters belonging to the public. If the  
33 application does not contain, and the applicant does not promptly  
34 furnish sufficient information on which to base such findings, the  
35 department may issue a preliminary permit, for a period of not to  
36 exceed three years, requiring the applicant to make such surveys,  
37 investigations, studies, and progress reports, as in the opinion of the  
38 department may be necessary. If the applicant fails to comply with the

1 conditions of the preliminary permit, it and the application or  
2 applications on which it is based shall be automatically canceled and  
3 the applicant so notified. If the holder of a preliminary permit  
4 shall, before its expiration, file with the department a verified  
5 report of expenditures made and work done under the preliminary permit,  
6 which, in the opinion of the department, establishes the good faith,  
7 intent and ability of the applicant to carry on the proposed  
8 development, the preliminary permit may, with the approval of the  
9 governor, be extended, but not to exceed a maximum period of five years  
10 from the date of the issuance of the preliminary permit. The  
11 department shall make and file as part of the record in the matter,  
12 written findings of fact concerning all things investigated, and if it  
13 shall find that there is water available for appropriation for a  
14 beneficial use, and the appropriation thereof as proposed in the  
15 application will not impair existing rights or be detrimental to the  
16 public welfare, it shall issue a permit stating the amount of water to  
17 which the applicant shall be entitled and the beneficial use or uses to  
18 which it may be applied: PROVIDED, That where the water applied for is  
19 to be used for irrigation purposes, it shall become appurtenant only to  
20 such land as may be reclaimed thereby to the full extent of the soil  
21 for agricultural purposes. But where there is no unappropriated water  
22 in the proposed source of supply, or where the proposed use conflicts  
23 with existing rights, or threatens to prove detrimental to the public  
24 interest, having due regard to the highest feasible development of the  
25 use of the waters belonging to the public, it shall be duty of the  
26 department to reject such application and to refuse to issue the permit  
27 asked for. If the permit is refused because of conflict with existing  
28 rights and such applicant shall acquire same by purchase or  
29 condemnation under RCW 90.03.040, the department may thereupon grant  
30 such permit. Any application may be approved for a less amount of  
31 water than that applied for, if there exists substantial reason  
32 therefor, and in any event shall not be approved for more water than  
33 can be applied to beneficial use for the purposes named in the  
34 application. In determining whether or not a permit shall issue upon  
35 any application, it shall be the duty of the department to investigate  
36 all facts relevant and material to the application. If the applicant  
37 is a public water system that is a party to an existing intertie  
38 agreement, the department shall also consider the existence, nature,  
39 economics, and terms of the agreement between the intertied public

1 water systems when making a determination on the application for new  
2 water rights by the public water system. After the department approves  
3 ((said)) the application in whole or in part and before any permit  
4 shall be issued thereon to the applicant, such applicant shall pay the  
5 fee provided in RCW 90.03.470: PROVIDED FURTHER, That in the event a  
6 permit is issued by the department upon any application, it shall be  
7 its duty to notify the director of fish and wildlife of such issuance.

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