
SUBSTITUTE HOUSE BILL 2200

State of Washington

54th Legislature

1996 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Mastin, Lisk, Mulliken, Honeyford, Robertson, Basich, Horn and Goldsmith)

Read first time 01/18/96.

1 AN ACT Relating to water resource management; amending RCW
2 90.54.020, 90.54.180, 90.03.383, and 90.14.140; reenacting and amending
3 RCW 43.84.092; adding new sections to chapter 90.03 RCW; adding a new
4 section to chapter 34.05 RCW; creating new sections; adding a new
5 chapter to Title 90 RCW; and providing expiration dates.

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

7 **PART I**

8 **BASIN PLANS AND INSTREAM FLOWS**

9 **GENERAL PROVISIONS**

10 NEW SECTION. **Sec. 101.** Unless the context clearly requires
11 otherwise, the definitions in this section apply throughout this
12 chapter.

13 (1) "Department" means the department of ecology.

14 (2) "WRIA" means a water resource inventory area established in
15 chapter 173-500 WAC as it existed on January 1, 1996.

1 (3) "Water supply special purpose district" means a water, combined
2 water-sewer, irrigation, reclamation, or public utility district that
3 provides water to persons or other water users within the district.

4 NEW SECTION. **Sec. 102.** It is the intent of the legislature that
5 water resource planning be done locally, at the watershed level. Such
6 local planning is not required, but may be conducted as provided in
7 this chapter. If such local planning is conducted for a WRIA, it shall
8 provide for the establishment of instream flows and a comprehensive
9 water resources program for the WRIA. No plan developed under this
10 chapter may impair or impede any water right existing before the plan
11 is adopted under section 110(5) of this act.

12 NEW SECTION. **Sec. 103.** Once a WRIA planning unit has been
13 organized and has established priorities under section 108 of this act,
14 it may apply to the department for funding assistance for conducting
15 the planning. The department shall provide five hundred thousand
16 dollars per WRIA on a first-come, first-served basis to each such
17 planning unit planning under this chapter and so applying. The moneys
18 shall be provided from and to the extent of appropriations made by the
19 legislature to the department expressly for this purpose. Funding
20 provided under this section shall be considered to be a contractual
21 obligation against the moneys appropriated for this purpose.

22 NEW SECTION. **Sec. 104.** (1) This chapter shall not be construed as
23 creating a new cause of action against the state or any county, city,
24 or special purpose district.

25 (2) Notwithstanding RCW 4.92.090, 4.96.010, and 64.40.020, no claim
26 for damages may be filed against the state or any county, city, or
27 special purpose district that participates in a WRIA planning unit for
28 performing responsibilities under this chapter. The exclusion from
29 liability contained in this subsection does not apply to a county,
30 city, or special purpose district that votes to adopt provisions in a
31 WRIA plan that have been identified by the department as being in
32 conflict with state or federal law with regard to those provisions if
33 advice regarding the conflict was provided under section 110(2) of this
34 act.

1 NEW SECTION. **Sec. 105.** (1) Of the counties located in whole or in
2 part in a WRIA, the county with the largest population residing within
3 the boundaries of the WRIA is the lead agency for WRIA planning
4 conducted for that WRIA under this chapter, except as provided in
5 subsection (5) of this section and section 106 of this act. Such a
6 county may choose to initiate water resource planning for the WRIA
7 under this chapter. If it does so choose, it shall convene a meeting
8 of the members of the legislative authorities of the counties with
9 territory within a WRIA for the appointment of a WRIA planning unit.
10 Unless an existing entity is to be chosen as the planning unit under
11 subsection (5) of this section, it shall also notify the cities, water
12 supply special purpose districts, and conservation districts with
13 territory within the WRIA that these groups are to meet to appoint
14 their members of the WRIA planning unit. For the purposes of this
15 section and sections 106 and 110 of this act, a county is considered to
16 have territory within a WRIA only if the territory of the county
17 located in the WRIA constitutes at least fifteen percent of the area of
18 the WRIA.

19 (2)(a) One WRIA planning unit shall be appointed for the WRIA as
20 provided by this section or for a multi-WRIA area as provided by
21 section 106 of this act for multi-WRIA planning. Except as provided in
22 subsection (5) of this section, the planning unit shall be composed of:
23 One member from each county with territory in the WRIA representing the
24 county and appointed by the county; one member for each county with
25 territory in the WRIA, but not less than two members, representing
26 cities with territory in the WRIA and appointed jointly by those
27 cities; two members representing all water supply special purpose
28 districts with territory within the WRIA and appointed jointly by those
29 districts; one member representing all conservation districts with
30 territory within the WRIA and appointed jointly by those districts;
31 four members representing the general citizenry, of which at least two
32 shall be holders of water rights, appointed jointly by the counties
33 with territory within the WRIA; and six members representing various
34 special interest groups appointed jointly by the counties with
35 territory within the WRIA.

36 (b) In addition, for a WRIA located within Pierce, King, or
37 Snohomish county, a representative of the largest water purveyor using
38 water from the WRIA shall be an ex officio member of the planning unit

1 whether the principal offices of the purveyor are or are not located
2 within the WRIA.

3 (3) Except for a person who is an ex officio member of the planning
4 unit under subsection (2)(b) of this section, each person appointed to
5 a WRIA planning unit shall have been a resident of the WRIA for at
6 least five years. No state employee or state official may be appointed
7 to the planning unit. In appointing persons to the WRIA planning unit
8 representing special interest groups, the counties shall consider
9 industrial water users, general businesses, hydroelectric and thermal
10 power producers, and irrigated agriculture, nonirrigated agriculture,
11 forestry, recreation, environmental, and fisheries interest groups and
12 other groups with interests in the WRIA.

13 (4) In voting to appoint the members of a WRIA planning unit, to
14 choose a planning unit under subsection (5) of this section or section
15 106(4) of this act, to choose or select a lead agency for water
16 resource planning under this chapter, to approve a WRIA plan under
17 section 110 of this act or to request or concur with a request for
18 multi-WRIA planning under section 106 of this act, each county with
19 territory within the WRIA shall have three votes, divided equally among
20 the members of the county's legislative authority and these actions
21 shall be made by majority vote based on the votes allocated under this
22 section. In voting to appoint members of a WRIA planning unit: Each
23 city with territory within the WRIA shall have one vote and
24 appointments shall be made by majority vote of such cities; each water
25 supply special purpose district with territory within the WRIA shall
26 have one vote and appointments shall be made by majority vote of such
27 districts; and each conservation district with territory within the
28 WRIA shall have one vote and appointments shall be made by majority
29 vote of such districts. Except as provided in subsection (5) of this
30 section, all appointments shall be made within sixty days of the date
31 the appointing authorities other than the counties are notified to
32 convene to make appointments or the appointments shall be made by the
33 counties with territory in the WRIA in the same manner the counties
34 make other appointments. A vacancy on the planning unit shall be
35 filled by appointment in the same manner prescribed for appointing the
36 position that has become vacant.

37 (5) When the counties of a WRIA have convened jointly to make
38 appointments to the planning unit, they may, by a majority vote, choose
39 as the lead agency for WRIA planning any governmental entity in the

1 WRIA. Such a governmental entity shall act as the lead agency for this
2 purpose if it agrees in writing to accept the designation. The
3 counties so convened may also, by a majority vote, choose as a planning
4 unit an entity with a composition substantially similar to the
5 composition provided by subsection (2) of this section that was in
6 existence prior to such convening and the counties find to be capable
7 of serving as the planning unit for water resource planning in the
8 WRIA. Such an entity shall serve as the planning unit for water
9 resource planning in the WRIA under this chapter if the entity agrees
10 in writing to do so.

11 NEW SECTION. **Sec. 106.** (1) The counties with territory in a WRIA
12 may elect to conduct multi-WRIA planning with the counties with
13 territory in one or more other WRIAs. If the counties with territory
14 in these other WRIAs concur, all of the counties with territory in
15 these WRIAs shall convene and shall appoint one planning unit to
16 conduct the water resource planning for the multi-WRIA area.

17 (a) Except as provided in subsection (4) of this section, the
18 planning unit shall be composed of: Up to one member, as that number
19 is determined by the counties jointly, for each county with territory
20 in the multi-WRIA area representing the counties and appointed by the
21 counties jointly; up to one member, as that number is determined by the
22 cities jointly, for each county with territory in the multi-WRIA area,
23 representing cities with territory in the multi-WRIA area and appointed
24 jointly by those cities; up to three members, as that number is
25 determined by the districts, representing all water supply special
26 purpose districts with territory within the multi-WRIA area and
27 appointed jointly by those districts; up to two members, as that number
28 is determined by the districts, representing all conservation districts
29 with territory within the multi-WRIA area and appointed jointly by
30 those districts; four members representing the general citizenry, of
31 which at least two shall be holders of water rights, appointed jointly
32 by the counties with territory within the multi-WRIA area; and six
33 members representing various special interest groups appointed jointly
34 by the counties with territory within the multi-WRIA area.

35 (b) In addition, for a WRIA located within Pierce, King, or
36 Snohomish county, a representative of the largest water purveyor using
37 water from the multi-WRIA area shall be an ex officio member of the

1 planning unit whether the principal offices of the purveyor are or are
2 not located within the multi-WRIA area.

3 (c) Except for a person who is an ex officio member of the planning
4 unit under subsection (1)(b) of this section, each person appointed to
5 a multi-WRIA planning unit shall have been a resident of the multi-WRIA
6 area for at least five years. No state employee or state official may
7 be appointed to the planning unit. In appointing persons to the multi-
8 WRIA planning unit representing special interest groups the counties
9 shall consider industrial water users, general businesses,
10 hydroelectric and thermal power producers, and irrigated agriculture,
11 nonirrigated agriculture, forestry, recreation, environmental, and
12 fisheries interest groups and other groups with interests in the multi-
13 WRIA area.

14 (2) The counties in the multi-WRIA area shall select, by a majority
15 vote, a governmental entity in the multi-WRIA area to act as lead
16 agency for water resource planning in the multi-WRIA area under this
17 chapter. Such an entity shall serve as the lead agency if it agrees in
18 writing to do so. Except as provided in subsection (4) of this
19 section, all appointments shall be made within sixty days of the date
20 the lead agency in the multi-WRIA area notifies the other appointing
21 authorities to convene to make appointments or the appointments shall
22 be made by the counties with territory in the multi-WRIA area in the
23 same manner the counties make other appointments. A vacancy on the
24 planning unit shall be filled by appointment in the same manner
25 prescribed for appointing the position that has become vacant.

26 (3) A planning unit for a multi-WRIA area shall perform all of the
27 functions assigned by this chapter to a WRIA planning unit and is
28 subject to all of the provisions of this chapter that apply to a WRIA
29 planning unit.

30 (4) The counties convened to make appointments to a planning unit
31 may, by a majority vote, choose as a planning unit an entity with a
32 composition substantially similar to the composition provided by
33 subsection (1) of this section that was in existence prior to such
34 convening and the counties find to be capable of serving as the
35 planning unit for water resource planning in the multi-WRIA area. Such
36 an entity shall serve as the planning unit for water resource planning
37 in the multi-WRIA area under this chapter if the entity agrees in
38 writing to do so.

1 NEW SECTION. **Sec. 107.** The lead agency shall provide staff
2 support for the work of the WRIA planning unit. Each WRIA planning
3 unit may establish its own methods of operation that are consistent
4 with this chapter and may establish methods for reviewing the
5 operations of its lead agency. No planning unit appointed or selected
6 under this chapter may possess or exercise the power of eminent domain.
7 No planning unit appointed or selected under this chapter may take any
8 action that affects in any manner a general adjudication proceeding for
9 water rights, completed or ongoing. Each WRIA planning unit is
10 encouraged to: Consider information and plans that may have been
11 previously developed by other entities in establishing water resource
12 management plans for the WRIA; consider existing data regarding water
13 resources in the WRIA; and, for a WRIA that borders another state,
14 cooperate with local government counterparts in the adjacent state
15 regarding water resource planning. Water resource plans developed
16 under this chapter for a WRIA may not interfere in any manner with a
17 general adjudication of water rights, completed or ongoing. Such a
18 WRIA plan may not in any manner impair, diminish, or interfere with a
19 water right that exists before the adoption of the plan by the
20 department under section 110 of this act.

21 All meetings of a WRIA planning unit shall be conducted as public
22 meetings as required for such meetings by the open public meetings act,
23 chapter 42.30 RCW. Some time shall be set aside at the end of each
24 meeting of a WRIA planning unit for public comments.

25 No person who is a member of a WRIA planning unit may designate
26 another to act on behalf of the person as a member or to attend as a
27 member a meeting of the unit on behalf of the person. If a member of
28 a WRIA planning unit is absent from more than five meetings of the WRIA
29 planning unit that constitute twenty percent or more of the meetings
30 that have been conducted by the planning unit while the person is a
31 member of the unit and these absences have not been excused as provided
32 by this section, the member's position on the WRIA planning unit is to
33 be considered vacant. A person's absence from a meeting may be
34 excused: By the chair of the planning unit if a written request to do
35 so is received by the chair before the meeting from which the member is
36 to be absent; or by a majority vote of the members of the planning unit
37 at the meeting during which the member is absent.

1 NEW SECTION. **Sec. 108.** (1) Each WRIA planning unit shall develop
2 a water resource plan. The plan must contain the elements listed in
3 subsection (2) of this section and may include other elements added by
4 the planning unit. Once organized, the first task of the planning unit
5 is to prioritize these elements regarding their importance in the WRIA
6 and in developing a water resource plan for the WRIA. A plan shall not
7 be developed such that its provisions are in conflict with state or
8 federal law or impair, diminish, or interfere in any manner with a
9 water right existing prior to its adoption. Each plan shall
10 acknowledge that the water rights of citizens are private rights to
11 real property.

12 (2) The plan must include the following:

13 (a) A quantitative estimation of how much surface and ground water
14 is in the planning unit using United States geological survey
15 information and other existing sources;

16 (b) A quantitative estimation using existing sources of
17 information, of how much surface and ground water is available for use,
18 both in-stream and out-of-stream, for agricultural, fisheries,
19 recreational, environmental, industrial, municipal, and residential
20 purposes;

21 (c) A quantitative estimation using existing sources of
22 information, of how much surface and ground water is being used, both
23 in-stream and out-of-stream, for agricultural, industrial, fisheries,
24 recreational, environmental, municipal, and residential purposes, and
25 including amounts claimed or permitted for future municipal needs;

26 (d) A quantitative estimation of how much water, approximately, is
27 claimed or permitted, including in-stream flows;

28 (e) A quantitative description of future water-based in-stream and
29 out-of-stream needs in the planning unit, based on projected population
30 and agricultural and other economic growth;

31 (f) Instream flows established prior to January 1, 1996, by rule.
32 Notwithstanding any other provisions of state law, the planning unit
33 will set instream flows as part of the plan for the other rivers,
34 streams, and lakes in the WRIA, or in the multi-WRIA area for multi-
35 WRIA planning under section 106 of this act, for which flows have not
36 been set and may make adjustments to flows that have already been set.
37 An instream flow or base flow or level set for a body of water in a
38 WRIA plan adopted by the department under section 110 of this act
39 supersedes any other such flow or level previously established for the

1 body of water. Planning units are encouraged to set the flow levels as
2 soon as is practicable;

3 (g) Management strategies for achieving present and future needs,
4 including:

5 (i) Conservation measures;

6 (ii) Storage enhancements, including modifications to existing
7 reservoirs and new reservoirs;

8 (iii) In-stream flows;

9 (h) An estimation of hydraulic continuity between ground and
10 surface waters that is to be taken into consideration for the
11 allocation and use of water resources. This estimation shall be based
12 on available data and any data the planning unit may secure with funds
13 other than the funds provided to the unit by the department for WRIA
14 planning;

15 (i) A description of the strategies for plan implementation and the
16 entities responsible for implementing the plan, including but not
17 limited to local, tribal, state, and federal governments working
18 singularly or in combination. The implementing entities may also
19 include activities conducted by private organizations and individuals.

20 NEW SECTION. **Sec. 109.** (1) Water resource management plans
21 developed pursuant to the process in this chapter and subsequently
22 adopted by the department under section 110 of this act are presumed
23 valid. This presumption shall apply in any petition or action filed
24 against a plan.

25 (2) Any action taken by a state agency regarding or affecting water
26 resources within a WRIA for which a plan has been adopted under section
27 110 of this act and any planning conducted by a state agency regarding
28 or affecting water resources within a WRIA for which a plan has been
29 adopted under section 110 of this act shall be taken or conducted in a
30 manner that is consistent with the plan. All actions and decisions of
31 the department regarding water resources in the WRIA shall be
32 consistent with and based upon such an adopted plan for the WRIA. Any
33 other authority of the department exercised within the WRIA regarding
34 or affecting water resources shall be exercised in a manner that is
35 consistent with such an adopted plan.

36 NEW SECTION. **Sec. 110.** (1) Upon completing a proposed water
37 resource plan for the WRIA, the WRIA planning unit shall conduct at

1 least one public hearing in the WRIA on the proposed plan. After
2 considering the public comments presented at the hearing or hearings,
3 the planning unit shall submit a copy of its proposed plan to the
4 department. A proposed plan may be submitted to the department only if
5 the unit has provided interim approval of the plan for this purpose by
6 a majority vote of the members of the planning unit.

7 (2) The department shall conduct at least one public hearing,
8 announced in accordance with chapter 34.05 RCW, on each proposed WRIA
9 water resource plan submitted under this section. The department shall
10 provide advice as to any specific subsections or sections of the plan
11 that the department believes to be in conflict with state or federal
12 law and may provide other recommendations regarding the plan. The
13 department shall transmit its advice and recommendations regarding the
14 plan to the WRIA planning unit within sixty days of receiving it for
15 review.

16 (3) The WRIA planning unit shall vote on each recommendation
17 provided by the department and on the department's advice regarding any
18 subsections or sections of the proposed WRIA plan the department
19 believed to be in conflict with state or federal law. The planning
20 unit may adopt such a recommendation or provide changes to respond to
21 the advice of the department by a majority vote of the members of the
22 planning unit.

23 The WRIA planning unit shall approve a water resource plan for the
24 WRIA by a two-thirds majority vote of the members of the planning unit.
25 An approved plan shall be submitted to the counties with territory
26 within the WRIA for adoption.

27 (4) The legislative authority of each of the counties with
28 territory within the WRIA shall conduct at least two public hearings on
29 the WRIA plan submitted to the county under this section. After the
30 public hearings, the legislative authorities of these counties shall
31 convene in joint session to consider the plan. The counties may
32 approve or reject the plan, but may not amend the plan. Approval of a
33 plan, or of recommendations for a plan that is not approved, shall be
34 made by a majority vote of the members of the various legislative
35 authorities of the counties with territory in the WRIA based on the
36 votes allocated under section 102 of this act.

37 If the plan is not approved, it shall be returned to the WRIA
38 planning unit with recommendations for revisions. Any revised plan
39 prepared by the planning unit shall be submitted to the department and

1 to the counties as provided by this section for WRIA water resource
2 plans generally.

3 (5) If the plan is approved by the members of the legislative
4 authorities, the plan shall be transmitted to the department for
5 adoption. The department shall adopt such an approved WRIA water
6 resource plan by rule. The department has no discretion to amend or
7 reject the plan. A copy of the plan and notice of its adoption as
8 rules shall be published in the state register under chapter 34.05 RCW.

9 (6) If the department advises a planning unit that an element of
10 its WRIA plan is in conflict with state or federal law and the unit
11 does not remove the conflict created by the element from its plan, the
12 state is not liable for any judgment that may be awarded regarding the
13 conflict. This subsection shall not be construed as establishing such
14 state liability for any other element of the plan adopted as rules.

15 NEW SECTION. **Sec. 111.** The WRIA planning units may accept grants,
16 funds, and other financing, as well as enter into cooperative
17 agreements with private and public entities for planning assistance and
18 funding.

19 NEW SECTION. **Sec. 112.** A new section is added to chapter 90.03
20 RCW to read as follows:

21 (1) The department shall rule in a timely manner upon applications
22 to appropriate public surface and ground water. For applications that
23 seek to appropriate water from within a WRIA for which a WRIA plan has
24 been adopted, the department shall grant or deny the application within
25 one hundred eighty days of the date the properly completed application
26 is filed with the department, except as provided in subsection (2) of
27 this section. For applications that seek to appropriate water from
28 within a WRIA for which no WRIA plan has been adopted, the department
29 shall grant or deny the application within one year of the date the
30 properly completed application is filed with the department, except as
31 provided in subsection (2) of this section. The times allowed in this
32 section to rule upon an application shall not include the time it takes
33 the applicant to respond to an explicit request for additional
34 information reasonably required to make a determination on the
35 application. The department shall be allowed only one such request for
36 additional information. The cost of obtaining such information shall
37 be reasonable in relation to the quantity and value of the water right

1 applied for. Once the applicant responds to an information request,
2 the stay of the time allowed for the permit decision shall end.

3 (2) If a detailed statement, generally referred to as an
4 environmental impact statement, must be prepared under chapter 43.21C
5 RCW for or in regard to an application to appropriate water, the
6 department shall grant or deny the application within ninety days of
7 the date the final environmental impact statement is available from the
8 official responsible for it under chapter 43.21C RCW.

9 NEW SECTION. **Sec. 113.** A new section is added to chapter 34.05
10 RCW to read as follows:

11 (1) Once the department of ecology receives a water resource plan
12 submitted by a WRIA planning unit for advice and recommendations under
13 section 110 of this act, the department shall conduct at least one
14 public hearing on the plan and shall provide notice of the hearing and
15 proposed plan as provided in RCW 34.05.320 for the proposal of a rule.
16 The department shall maintain a file for the plan. Once the plan has
17 been adopted by the counties in the WRIA under section 110 of this act
18 and the plan has been submitted to the department of ecology, the
19 department shall file the plan with the code reviser along with an
20 order adopting the plan as rules. The code reviser shall cause the
21 order and the water resource plan to be published in the Washington
22 state register in the manner provided for the adoption of final rules
23 and shall incorporate the plan into the Washington Administrative Code.
24 No other aspect of this chapter that establishes procedures for the
25 adoption of rules applies to the adoption of the plan by the
26 department.

27 (2) For the purposes of this section, "WRIA" has the meaning
28 established in section 101 of this act.

29 **PART II**

30 **STORAGE**

31 **Sec. 201.** RCW 90.54.020 and 1989 c 348 s 1 are each amended to
32 read as follows:

33 Utilization and management of the waters of the state shall be
34 guided by the following general declaration of fundamentals:

35 (1) Uses of water for domestic, stock watering, industrial,
36 commercial, agricultural, irrigation, hydroelectric power production,

1 mining, fish and wildlife maintenance and enhancement, recreational,
2 and thermal power production purposes, and preservation of
3 environmental and aesthetic values, and all other uses compatible with
4 the enjoyment of the public waters of the state, are declared to be
5 beneficial.

6 (2) Allocation of waters among potential uses and users shall be
7 based generally on the securing of the maximum net benefits for the
8 people of the state. Maximum net benefits shall constitute total
9 benefits less costs including opportunities lost.

10 (3) The quality of the natural environment shall be protected and,
11 where possible, enhanced as follows:

12 (a) Perennial rivers and streams of the state shall be retained
13 with base flows necessary to provide for preservation of wildlife,
14 fish, scenic, aesthetic and other environmental values, and
15 navigational values. Lakes and ponds shall be retained substantially
16 in their natural condition. Withdrawals of water which would conflict
17 therewith shall be authorized only in those situations where it is
18 clear that overriding considerations of the public interest will be
19 served.

20 (b) Waters of the state shall be of high quality. Regardless of
21 the quality of the waters of the state, all wastes and other materials
22 and substances proposed for entry into said waters shall be provided
23 with all known, available, and reasonable methods of treatment prior to
24 entry. Notwithstanding that standards of quality established for the
25 waters of the state would not be violated, wastes and other materials
26 and substances shall not be allowed to enter such waters which will
27 reduce the existing quality thereof, except in those situations where
28 it is clear that overriding considerations of the public interest will
29 be served. Technology-based effluent limitations or standards for
30 discharges for municipal water treatment plants located on the
31 Chehalis, Columbia, Cowlitz, Lewis, or Skagit river shall be adjusted
32 to reflect credit for substances removed from the plant intake water
33 if:

34 (i) The municipality demonstrates that the intake water is drawn
35 from the same body of water into which the discharge is made; and

36 (ii) The municipality demonstrates that no violation of receiving
37 water quality standards or appreciable environmental degradation will
38 result.

1 (4) The development of multipurpose water storage facilities shall
2 be a high priority for programs of water allocation, planning,
3 management, and efficiency. The department, other state agencies,
4 local governments, and planning units formed under section 102 or 106
5 of this act shall evaluate the potential for the development of new
6 storage projects and the benefits of storage in reducing damage to
7 stream banks and property, increasing the use of land, providing water
8 for municipal, industrial, agricultural, power generation, and other
9 beneficial uses, and improving stream flow regimes for fisheries and
10 other instream uses.

11 (5) Adequate and safe supplies of water shall be preserved and
12 protected in potable condition to satisfy human domestic needs.

13 (~~(5)~~) (6) Multiple-purpose impoundment structures are to be
14 preferred over single-purpose structures. Due regard shall be given to
15 means and methods for protection of fishery resources in the planning
16 for and construction of water impoundment structures and other
17 artificial obstructions.

18 (~~(6)~~) (7) Federal, state, and local governments, individuals,
19 corporations, groups and other entities shall be encouraged to carry
20 out practices of conservation as they relate to the use of the waters
21 of the state. In addition to traditional development approaches,
22 improved water use efficiency and conservation shall be emphasized in
23 the management of the state's water resources and in some cases will be
24 a potential new source of water with which to meet future needs
25 throughout the state.

26 (~~(7)~~) (8) Development of water supply systems, whether publicly
27 or privately owned, which provide water to the public generally in
28 regional areas within the state shall be encouraged. Development of
29 water supply systems for multiple domestic use which will not serve the
30 public generally shall be discouraged where water supplies are
31 available from water systems serving the public.

32 (~~(8)~~) (9) Full recognition shall be given in the administration
33 of water allocation and use programs to the natural interrelationships
34 of surface and ground waters.

35 (~~(9)~~) (10) Expressions of the public interest will be sought at
36 all stages of water planning and allocation discussions.

37 (~~(10)~~) (11) Water management programs, including but not limited
38 to, water quality, flood control, drainage, erosion control and storm
39 runoff are deemed to be in the public interest.

1 **Sec. 202.** RCW 90.54.180 and 1989 c 348 s 5 are each amended to
2 read as follows:

3 Consistent with the fundamentals of water resource policy set forth
4 in this chapter, state and local governments, individuals,
5 corporations, groups and other entities shall be encouraged to carry
6 out water use efficiency and conservation programs and practices
7 consistent with the following:

8 (1) Water efficiency and conservation programs should utilize an
9 appropriate mix of economic incentives, cost share programs, regulatory
10 programs, and technical and public information efforts. Programs which
11 encourage voluntary participation are preferred.

12 (2) Increased water use efficiency should receive consideration as
13 a potential source of water in state and local water resource planning
14 processes. In determining the cost-effectiveness of alternative water
15 sources, consideration should be given to the benefits of conservation,
16 including waste water recycling, and (~~(impoundment)~~) storage of waters.

17 (3) In determining the cost-effectiveness of alternative water
18 sources, full consideration should be given to the benefits of storage
19 which can reduce the damage to stream banks and property, increase the
20 utilization of land, provide water for municipal, industrial,
21 agricultural, and other beneficial uses, provide for the generation of
22 electric power from renewable resources, and improve stream flow
23 regimes for fishery and other instream uses.

24 (4) Entities receiving state financial assistance for construction
25 of water source expansion or acquisition of new sources shall develop,
26 and implement if cost-effective, a water use efficiency and
27 conservation element of a water supply plan pursuant to RCW
28 43.20.230(1).

29 (5) State programs to improve water use efficiency should focus on
30 those areas of the state in which water is overappropriated; areas that
31 experience diminished streamflows or aquifer levels; and areas where
32 projected water needs, including those for instream flows, exceed
33 available supplies.

34 (6) Existing and future generations of citizens of the state of
35 Washington should be made aware of the importance of the state's water
36 resources and the need for wise and efficient use and development of
37 this vital resource. In order to increase this awareness, state
38 agencies should integrate public education on increasing water use
39 efficiency into existing public information efforts. This effort shall

1 be coordinated with other levels of government, including local
2 governments and Indian tribes.

3 **PART III**

4 **GENERAL ADJUDICATIONS - ESCROW ACCOUNT**

5 NEW SECTION. **Sec. 301.** A new section is added to chapter 90.03
6 RCW to read as follows:

7 The legislature finds that the lack of certainty regarding water
8 rights within a water resource basin may impede management and planning
9 for water resources. The legislature further finds that planning units
10 conducting water resource planning under chapter 90.-- RCW (sections
11 101 through 111 of this act) may find that the certainty provided by a
12 general adjudication of water rights under this chapter is required for
13 water planning or water management in a water resource inventory area
14 or in a portion of the area. Therefore, such planning units may
15 petition the department to conduct such a general adjudication and the
16 department shall give high priority to such a request in initiating any
17 such general adjudications under this chapter.

18 NEW SECTION. **Sec. 302.** A new section is added to chapter 90.03
19 RCW to read as follows:

20 (1) The water escrow account is established in the state treasury.
21 Funds in the water escrow account may be expended, subject to
22 appropriation in the 1995-97 and subsequent fiscal biennia for the
23 costs of basin-wide water rights adjudications.

24 (2) By June 30, 1996, the state treasurer shall transfer five
25 hundred thousand dollars from the state general fund to the water
26 escrow account.

27 **Sec. 303.** RCW 43.84.092 and 1995 c 394 s 1 and 1995 c 122 s 12 are
28 each reenacted and amended to read as follows:

29 (1) All earnings of investments of surplus balances in the state
30 treasury shall be deposited to the treasury income account, which
31 account is hereby established in the state treasury.

32 (2) The treasury income account shall be utilized to pay or receive
33 funds associated with federal programs as required by the federal cash
34 management improvement act of 1990. The treasury income account is
35 subject in all respects to chapter 43.88 RCW, but no appropriation is

1 required for refunds or allocations of interest earnings required by
2 the cash management improvement act. Refunds of interest to the
3 federal treasury required under the cash management improvement act
4 fall under RCW 43.88.180 and shall not require appropriation. The
5 office of financial management shall determine the amounts due to or
6 from the federal government pursuant to the cash management improvement
7 act. The office of financial management may direct transfers of funds
8 between accounts as deemed necessary to implement the provisions of the
9 cash management improvement act, and this subsection. Refunds or
10 allocations shall occur prior to the distributions of earnings set
11 forth in subsection (4) of this section.

12 (3) Except for the provisions of RCW 43.84.160, the treasury income
13 account may be utilized for the payment of purchased banking services
14 on behalf of treasury funds including, but not limited to, depository,
15 safekeeping, and disbursement functions for the state treasury and
16 affected state agencies. The treasury income account is subject in all
17 respects to chapter 43.88 RCW, but no appropriation is required for
18 payments to financial institutions. Payments shall occur prior to
19 distribution of earnings set forth in subsection (4) of this section.

20 (4) Monthly, the state treasurer shall distribute the earnings
21 credited to the treasury income account. The state treasurer shall
22 credit the general fund with all the earnings credited to the treasury
23 income account except:

24 (a) The following accounts and funds shall receive their
25 proportionate share of earnings based upon each account's and fund's
26 average daily balance for the period: The capitol building
27 construction account, the Cedar River channel construction and
28 operation account, the Central Washington University capital projects
29 account, the charitable, educational, penal and reformatory
30 institutions account, the common school construction fund, the county
31 criminal justice assistance account, the county sales and use tax
32 equalization account, the data processing building construction
33 account, the deferred compensation administrative account, the deferred
34 compensation principal account, the department of retirement systems
35 expense account, the Eastern Washington University capital projects
36 account, the education construction fund, the emergency reserve fund,
37 the federal forest revolving account, the health services account, the
38 public health services account, the health system capacity account, the
39 personal health services account, the industrial insurance premium

1 refund account, the judges' retirement account, the judicial retirement
2 administrative account, the judicial retirement principal account, the
3 local leasehold excise tax account, the local real estate excise tax
4 account, the local sales and use tax account, the medical aid account,
5 the mobile home park relocation fund, the municipal criminal justice
6 assistance account, the municipal sales and use tax equalization
7 account, the natural resources deposit account, the perpetual
8 surveillance and maintenance account, the public employees' retirement
9 system plan I account, the public employees' retirement system plan II
10 account, the Puyallup tribal settlement account, the resource
11 management cost account, the site closure account, the special wildlife
12 account, the state employees' insurance account, the state employees'
13 insurance reserve account, the state investment board expense account,
14 the state investment board commingled trust fund accounts, the
15 supplemental pension account, the teachers' retirement system plan I
16 account, the teachers' retirement system plan II account, the tuition
17 recovery trust fund, the University of Washington bond retirement fund,
18 the University of Washington building account, the volunteer fire
19 fighters' relief and pension principal account, the volunteer fire
20 fighters' relief and pension administrative account, the Washington
21 judicial retirement system account, the Washington law enforcement
22 officers' and fire fighters' system plan I retirement account, the
23 Washington law enforcement officers' and fire fighters' system plan II
24 retirement account, the Washington state patrol retirement account, the
25 Washington State University building account, the Washington State
26 University bond retirement fund, the water escrow account, the water
27 pollution control revolving fund, and the Western Washington University
28 capital projects account. Earnings derived from investing balances of
29 the agricultural permanent fund, the normal school permanent fund, the
30 permanent common school fund, the scientific permanent fund, and the
31 state university permanent fund shall be allocated to their respective
32 beneficiary accounts. All earnings to be distributed under this
33 subsection (4)(a) shall first be reduced by the allocation to the state
34 treasurer's service fund pursuant to RCW 43.08.190.

35 (b) The following accounts and funds shall receive eighty percent
36 of their proportionate share of earnings based upon each account's or
37 fund's average daily balance for the period: The aeronautics account,
38 the aircraft search and rescue account, the central Puget Sound public
39 transportation account, the city hardship assistance account, the

1 county arterial preservation account, the department of licensing
2 services account, the economic development account, the essential rail
3 assistance account, the essential rail banking account, the ferry bond
4 retirement fund, the gasohol exemption holding account, the grade
5 crossing protective fund, the high capacity transportation account, the
6 highway bond retirement fund, the highway construction stabilization
7 account, the highway safety account, the marine operating fund, the
8 motor vehicle fund, the motorcycle safety education account, the
9 pilotage account, the public transportation systems account, the Puget
10 Sound capital construction account, the Puget Sound ferry operations
11 account, the recreational vehicle account, the rural arterial trust
12 account, the safety and education account, the small city account, the
13 special category C account, the state patrol highway account, the
14 transfer relief account, the transportation capital facilities account,
15 the transportation equipment fund, the transportation fund, the
16 transportation improvement account, the transportation revolving loan
17 account, and the urban arterial trust account.

18 (5) In conformance with Article II, section 37 of the state
19 Constitution, no treasury accounts or funds shall be allocated earnings
20 without the specific affirmative directive of this section.

21 **PART IV**
22 **INTERTIES**

23 **Sec. 401.** RCW 90.03.383 and 1991 c 350 s 1 are each amended to
24 read as follows:

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

1 reflect current use of water through those interties, pursuant to
2 subsection (3) of this section. The legislature further finds it in
3 the public interest to develop a coordinated process to review
4 proposals for interties commencing use after January 1, 1991.

5 (2) For the purposes of this section, the following definitions
6 shall apply:

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

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

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

1 January 1, 1991, the department of ecology, upon receipt of notice
2 meeting the requirements of this subsection, shall, as soon as
3 practicable, modify the place of use descriptions in the water right
4 permits, certificates, or claims to reflect the actual use through such
5 interties, provided that the place of use is within service area
6 designations established in a water system plan approved pursuant to
7 chapter 43.20 RCW, or a coordinated water system plan approved pursuant
8 to chapter 70.116 RCW, and further provided that the water used is
9 within the instantaneous and annual withdrawal rates specified in the
10 water rights ~~((permit))~~ and that no outstanding complaints of
11 impairment to existing water rights have been filed with the department
12 of ecology prior to September 1, 1991. Where such complaints of
13 impairment have been received, the department of ecology shall make all
14 reasonable efforts to resolve them in a timely manner through agreement
15 of the parties or through available administrative remedies.

16 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
17 exchange, acquisition, or delivery of water through interties approved
18 by the department of health commencing use after January 1, 1991, shall
19 be permitted when the intertie improves overall system reliability,
20 enhances the manageability of the systems, provides opportunities for
21 conjunctive use, or delays or avoids the need to develop new water
22 sources, and otherwise meets the requirements of this section, provided
23 that each public water system's water use shall not exceed the
24 instantaneous or annual withdrawal rate specified in its water right
25 authorization, shall not adversely affect existing water rights, and
26 shall not be inconsistent with state-approved plans such as water
27 system plans or other plans which include specific proposals for
28 construction of interties. Interties approved and commencing use after
29 January 1, 1991, shall not be inconsistent with regional water resource
30 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.

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

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

1 necessary to reflect the new place of use. The department of ecology
2 shall consider the applications pursuant to the provisions of RCW
3 90.03.380 and 90.44.100 as appropriate. The department of ecology
4 shall not deny or limit a change of place of use for an intertie on the
5 grounds that the holder of a permit has not yet put all of the water
6 authorized in the permit to beneficial use. If in its review of
7 proposed interties and associated water rights the department of
8 ecology determines that additional information is required to act on
9 the application, the department may request applicants to provide
10 information necessary for its decision, consistent with agency rules
11 and written guidelines. Parties disagreeing with the decision of the
12 department of ecology ((æ)) to approve or deny the application for
13 change in place of use may appeal the decision to the pollution control
14 hearings board.

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

21 **PART V**
22 **RELINQUISHMENT**

23 **Sec. 501.** RCW 90.14.140 and 1987 c 125 s 1 are each amended to
24 read as follows:

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

- 29 (a) Drought, or other unavailability of water;
30 (b) Active service in the armed forces of the United States during
31 military crisis;
32 (c) Nonvoluntary service in the armed forces of the United States;
33 (d) The operation of legal proceedings;
34 (e) Federal laws imposing land or water use restrictions either
35 directly or through the voluntary enrollment of a landowner in a
36 federal program implementing those laws, or acreage limitations, or
37 production quotas.

1 (2) Notwithstanding any other provisions of RCW 90.14.130 through
2 90.14.180, there shall be no relinquishment of any water right:

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

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

10 (c) If such right is claimed for a determined future development to
11 take place ((either)) at any time within fifteen years of either July
12 1, 1967, or the most recent beneficial use of the water right,
13 whichever date is later, or

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

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

18 **PART VI**
19 **GENERAL PERMITS**

20 NEW SECTION. **Sec. 601.** The legislature finds that the present
21 delay in the processing of water right applications is not beneficial
22 to the citizens of the state nor is it in keeping with the goal of
23 managing the resource to the highest possible standard and maximum net
24 benefit.

25 The legislature further finds that water conservation efforts would
26 be greatly enhanced by a permit system that encourages water right
27 applicants to use only the amount of water actually necessary to meet
28 their needs.

29 NEW SECTION. **Sec. 602.** A new section is added to chapter 90.03
30 RCW to read as follows:

31 (1) The department shall develop a general permit system for
32 appropriating water for nonconsumptive, nonbypass uses. This system
33 must be designed and used to accurately identify and register any water
34 right application that qualifies for the streamlined process of
35 appropriation of water by meeting the requirements in this section and
36 registering the use. The general permit system must be applicable

1 state-wide, and all waters of the state shall be eligible for coverage
2 under the system. The evaluation and report required for an
3 application under RCW 90.03.290 are not required for applications
4 processed under the general permit system. For the purposes of this
5 section:

6 (a) "Nonconsumptive, nonbypass use" means a use of water in which
7 water is diverted from a stream or drawn from an aquifer and following
8 its use is discharged back into or near the point of diversion or
9 withdrawal without diminishment in quality and less than five thousand
10 gallons of net consumption per day; and

11 (b) "Without diminishment of quality" means that, before being
12 discharged back to its source, the water being discharged meets state
13 water quality standards adopted under chapter 90.48 RCW.

14 (2) The department shall, by January 1, 1997, establish the general
15 permit system by adopting rules in accordance with chapter 34.05 RCW.
16 Before the adoption of rules for a system, the department shall consult
17 with representatives of the following interest groups: Agriculture;
18 aquaculture; home construction and development; county government; city
19 government; surface mining; and the environmental community. At least
20 four public hearings must be held at various locations around the
21 state, not less than two of which shall be east of the crest of the
22 Cascade mountains. The rules must identify criteria for proposed uses
23 of water for which applications might be processed under the system and
24 must establish procedures for filing and processing applications and
25 issuing water rights certificates under the general permit system.

26 NEW SECTION. **Sec. 603.** A new section is added to chapter 90.03
27 RCW to read as follows:

28 An application for registration as a nonconsumptive, nonbypass
29 water user under the general permit system established under section
30 602 of this act must be made on a form adopted and provided by the
31 department. Within sixty days of receipt of a properly completed
32 application, the department shall determine whether the proposed use is
33 eligible to be processed under the general permit system. If the
34 department determines that the proposed use is eligible to be processed
35 under the system, the application must be processed under the system
36 within the next sixty days. The priority date of the water right
37 established pursuant to this section shall be the date that the
38 properly completed application is submitted. If the department

1 determines that the proposed use is not eligible for the processing,
2 the department shall explain to the applicant in writing the reasons
3 for its determination. For a proposed use determined ineligible for
4 the processing, if the department finds that the information contained
5 on the application form substantially satisfies the information
6 requirements for an application for a use that would normally be filed
7 for processing the application outside of the general permit system,
8 the department shall notify the applicant of its finding and shall
9 process the application as if it were filed for processing outside of
10 the system. If the department finds that the information does not
11 substantially satisfy the requirements, the application must be
12 considered to be incomplete for the processing and the applicant must
13 be notified of this consideration.

14 NEW SECTION. **Sec. 604.** A new section is added to chapter 90.03
15 RCW to read as follows:

16 Nothing in sections 602 and 603 of this act authorizes the
17 impairment or operates to impair any existing water rights. A water
18 right holder under sections 602 and 603 of this act shall not make
19 withdrawals that impair a senior water right. A holder of a senior
20 water right who believes his or her water right is impaired may file a
21 complaint with the department of ecology. Where such complaints of
22 impairment have been received, the department of ecology shall make all
23 reasonable efforts to resolve them in a timely manner through agreement
24 of the parties. Nothing in section 602 or 603 of this act may be
25 construed as waiving any requirement established under chapter 90.48
26 RCW or federal law that a permittee secure a discharge permit regarding
27 water quality.

28 **PART VII**
29 **MISCELLANEOUS**

30 NEW SECTION. **Sec. 701.** As used in this act, part headings
31 constitute no part of the law.

32 NEW SECTION. **Sec. 702.** Sections 101 through 111 of this act shall
33 constitute a new chapter in Title 90 RCW.

--- END ---