
SECOND SUBSTITUTE SENATE BILL 5358

State of Washington 52nd Legislature 1991 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Barr and Madsen; by request of Jnt Sel Com on Water Resource Policy).

Read first time March 11, 1991.

1 AN ACT Relating to public water system interties; amending RCW
2 90.03.390; adding a new section to chapter 90.03 RCW; and creating new
3 sections.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW
6 to read as follows:

7 (1) The legislature recognizes the value of interties for improving
8 the reliability of public water systems, enhancing their management,
9 and more efficiently utilizing the increasingly limited resource.
10 Given the continued growth in the most populous areas of the state, the
11 increased complexity of public water supply management, and the trend
12 toward regional planning and regional solutions to resource issues,
13 interconnections of public water systems through interties provide a
14 valuable tool to ensure reliable public water supplies for the citizens
15 of the state. Public water systems have been encouraged in the past to

1 utilize interties to achieve public health and resource management
2 objectives. The legislature finds that it is in the public interest to
3 recognize interties existing and in use as of January 1, 1991, and to
4 have associated water rights modified by the department of ecology to
5 reflect current use of water through those interties, pursuant to
6 subsection (3) of this section. The legislature further finds it in
7 the public interest to develop a coordinated process to review
8 proposals for interties commencing use after January 1, 1991.

9 (2) For the purposes of this section, the following definitions
10 shall apply:

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

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

29 (3) Public water systems with interties existing and in use as of
30 January 1, 1991, or that have received written approval from the

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

26 (4) Notwithstanding the provisions of RCW 90.03.380 and 90.44.100,
27 exchange or delivery of water through interties commencing use after
28 January 1, 1991, shall be permitted when the intertie improves overall
29 system reliability, enhances the manageability of the systems, provides
30 opportunities for conjunctive use, or delays or avoids the need to

1 develop new water sources, and otherwise meets the requirements of this
2 section, provided that each public water system's water use shall not
3 exceed the instantaneous or annual withdrawal rate specified in its
4 water right authorization, shall not adversely affect existing water
5 rights, and shall not be inconsistent with state-approved plans such as
6 water system plans or other plans which include specific proposals for
7 construction of interties. Interties commencing use after January 1,
8 1991, shall not be inconsistent with regional water resource plans
9 developed pursuant to chapter 90.54 RCW.

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

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

29 (7) If the intertie is determined by the department of health to be
30 necessary to address emergent public health or safety concerns

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

22 (8) If the department of health determines the proposed intertie
23 appears to meet the requirements of subsection (4) of this section but
24 is not necessary to address emergent public health or safety concerns
25 associated with public water supply, the department of health shall
26 instruct the applicant to submit to the department of ecology an
27 application for change to the underlying water right or claim as
28 necessary to reflect the new place of use. The department of ecology
29 shall consider the applications pursuant to the provisions of RCW
30 90.03.380 and 90.44.100 as appropriate. If in its review of proposed

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

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

14 NEW SECTION. **Sec. 2.** Within service areas established
15 pursuant to chapters 43.20 and 70.116 RCW, the department of ecology
16 and the department of health shall coordinate approval procedures to
17 ensure compliance and consistency with the approved water system plan.

18 **Sec. 3.** RCW 90.03.390 and 1987 c 109 s 95 are each amended to read
19 as follows:

20 RCW 90.03.380 shall not be construed to prevent water users from
21 making a seasonal or temporary change of point of diversion or place of
22 use of water when such change can be made without detriment to existing
23 rights, but in no case shall such change be made without the permission
24 of the water master of the district in which such proposed change is
25 located, or of the department. Nor shall RCW 90.03.380 be construed to
26 prevent construction of emergency interties between public water
27 systems to permit exchange of water during short-term emergency
28 situations, or rotation in the use of water for bringing about a more

1 economical use of the available supply, provided however, that the
2 department of health in consultation with the department of ecology
3 shall adopt rules or develop written guidelines setting forth standards
4 for determining when a short-term emergency exists and the
5 circumstances in which emergency interties are permitted. The rules or
6 guidelines shall be consistent with the procedures established in RCW
7 43.83B.400 through 43.83B.420. Water users owning lands to which water
8 rights are attached may rotate in the use of water to which they are
9 collectively entitled, or an individual water user having lands to
10 which are attached water rights of a different priority, may in like
11 manner rotate in use when such rotation can be made without detriment
12 to other existing water rights, and has the approval of the water
13 master or department.

14 NEW SECTION. Sec. 4. If specific funding for the purposes of
15 this act, referencing this act by bill number, is not provided by June
16 30, 1991, in the omnibus appropriations act, this act shall be null and
17 void.