

**E2SHB 1338 - H AMD 578**

By Representative Linville

ADOPTED 06/05/2003

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 90.03.015 and 1987 c 109 s 65 are each amended to  
4 read as follows:

5 ~~((As used in this chapter:))~~ The definitions in this section apply  
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Department" means the department of ecology(~~(+)~~).

8 (2) "Director" means the director of ecology(~~(+and)~~).

9 (3) "Municipal water supplier" means an entity that supplies water  
10 for municipal water supply purposes.

11 (4) "Municipal water supply purposes" means a beneficial use of  
12 water: (a) For residential purposes through fifteen or more  
13 residential service connections or for providing residential use of  
14 water for a nonresidential population that is, on average, at least  
15 twenty-five people for at least sixty days a year; (b) for governmental  
16 or governmental proprietary purposes by a city, town, public utility  
17 district, county, sewer district, or water district; or (c) indirectly  
18 for the purposes in (a) or (b) of this subsection through the delivery  
19 of treated or raw water to a public water system for such use. If  
20 water is beneficially used under a water right for the purposes listed  
21 in (a), (b), or (c) of this subsection, any other beneficial use of  
22 water under the right generally associated with the use of water within  
23 a municipality is also for "municipal water supply purposes,"  
24 including, but not limited to, beneficial use for commercial,  
25 industrial, irrigation of parks and open spaces, institutional,  
26 landscaping, fire flow, water system maintenance and repair, or related  
27 purposes. If a governmental entity holds a water right that is for the  
28 purposes listed in (a), (b), or (c) of this subsection, its use of  
29 water or its delivery of water for any other beneficial use generally  
30 associated with the use of water within a municipality is also for

1 "municipal water supply purposes," including, but not limited to,  
2 beneficial use for commercial, industrial, irrigation of parks and open  
3 spaces, institutional, landscaping, fire flow, water system maintenance  
4 and repair, or related purposes.

5 (5) "Person" means any firm, association, water users' association,  
6 corporation, irrigation district, or municipal corporation, as well as  
7 an individual.

8 NEW SECTION. Sec. 2. A new section is added to chapter 90.03 RCW  
9 to read as follows:

10 Beneficial uses of water under a municipal water supply purposes  
11 water right may include water withdrawn or diverted under such a right  
12 and used for:

13 (1) Uses that benefit fish and wildlife, water quality, or other  
14 instream resources or related habitat values; or

15 (2) Uses that are needed to implement environmental obligations  
16 called for by a watershed plan approved under chapter 90.82 RCW, or a  
17 comprehensive watershed plan adopted under RCW 90.54.040(1) after the  
18 effective date of this section, a federally approved habitat  
19 conservation plan prepared in response to the listing of a species as  
20 being endangered or threatened under the federal endangered species  
21 act, 16 U.S.C. Sec. 1531 et seq., a hydropower license of the federal  
22 energy regulatory commission, or a comprehensive irrigation district  
23 management plan.

24 NEW SECTION. Sec. 3. A new section is added to chapter 90.03 RCW  
25 to read as follows:

26 When requested by a municipal water supplier or when processing a  
27 change or amendment to the right, the department shall amend the water  
28 right documents and related records to ensure that water rights that  
29 are for municipal water supply purposes, as defined in RCW 90.03.015,  
30 are correctly identified as being for municipal water supply purposes.  
31 This section authorizes a water right or portion of a water right held  
32 or acquired by a municipal water supplier that is for municipal water  
33 supply purposes as defined in RCW 90.03.015 to be identified as being  
34 a water right for municipal water supply purposes. However, it does  
35 not authorize any other water right or other portion of a right held or

1 acquired by a municipal water supplier to be so identified without the  
2 approval of a change or transfer of the right or portion of the right  
3 for such a purpose.

4 **Sec. 4.** RCW 90.03.260 and 1987 c 109 s 84 are each amended to read  
5 as follows:

6 (1) Each application for permit to appropriate water shall set  
7 forth the name and post office address of the applicant, the source of  
8 water supply, the nature and amount of the proposed use, the time  
9 during which water will be required each year, the location and  
10 description of the proposed ditch, canal, or other work, the time  
11 within which the completion of the construction and the time for the  
12 complete application of the water to the proposed use.

13 (2) If for agricultural purposes, ((it)) the application shall give  
14 the legal subdivision of the land and the acreage to be irrigated, as  
15 near as may be, and the amount of water expressed in acre feet to be  
16 supplied per season. If for power purposes, it shall give the nature  
17 of the works by means of which the power is to be developed, the head  
18 and amount of water to be utilized, and the uses to which the power is  
19 to be applied.

20 (3) If for construction of a reservoir, ((it)) the application  
21 shall give the height of the dam, the capacity of the reservoir, and  
22 the uses to be made of the impounded waters.

23 (4) If for community or multiple domestic water supply, the  
24 application shall give the projected number of service connections  
25 sought to be served. However, for a municipal water supplier that has  
26 an approved water system plan under chapter 43.20 RCW or an approval  
27 from the department of health to serve a specified number of service  
28 connections, the service connection figure in the application or any  
29 subsequent water right document is not an attribute limiting exercise  
30 of the water right as long as the number of service connections to be  
31 served under the right is consistent with the approved water system  
32 plan or specified number.

33 (5) If for municipal water supply, ((it)) the application shall  
34 give the present population to be served, and, as near as may be  
35 estimated, the future requirement of the municipality. However, for a  
36 municipal water supplier that has an approved water system plan under

1 chapter 43.20 RCW or an approval from the department of health to serve  
2 a specified number of service connections, the population figures in  
3 the application or any subsequent water right document are not an  
4 attribute limiting exercise of the water right as long as the  
5 population to be provided water under the right is consistent with the  
6 approved water system plan or specified number.

7 (6) If for mining purposes, (~~it~~) the application shall give the  
8 nature of the mines to be served and the method of supplying and  
9 utilizing the water; also their location by legal subdivisions.

10 (7) All applications shall be accompanied by such maps and  
11 drawings, in duplicate, and such other data, as may be required by the  
12 department, and such accompanying data shall be considered as a part of  
13 the application.

14 **Sec. 5.** RCW 90.03.386 and 1991 c 350 s 2 are each amended to read  
15 as follows:

16 (1) Within service areas established pursuant to chapter(~~s~~) 43.20  
17 (~~and~~) or 70.116 RCW, the department of ecology and the department of  
18 health shall coordinate approval procedures to ensure compliance and  
19 consistency with the approved water system plan or small water system  
20 management program.

21 (2) The effect of the department of health's approval of a planning  
22 or engineering document that describes a municipal water supplier's  
23 service area under chapter 43.20 RCW, or the local legislative  
24 authority's approval of service area boundaries in accordance with  
25 procedures adopted pursuant to chapter 70.116 RCW, is that the place of  
26 use of a surface water right or ground water right used by the supplier  
27 includes any portion of the approved service area that was not  
28 previously within the place of use for the water right if the supplier  
29 is in compliance with the terms of the water system plan or small water  
30 system management program, including those regarding water  
31 conservation, and the alteration of the place of use is not  
32 inconsistent, regarding an area added to the place of use, with: Any  
33 comprehensive plans or development regulations adopted under chapter  
34 36.70A RCW; any other applicable comprehensive plan, land use plan, or  
35 development regulation adopted by a city, town, or county; or any  
36 watershed plan approved under chapter 90.82 RCW, or a comprehensive

1 watershed plan adopted under RCW 90.54.040(1) after the effective date  
2 of this section, if such a watershed plan has been approved for the  
3 area.

4 (3) A municipal water supplier must implement cost-effective water  
5 conservation in accordance with the requirements of section 7 of this  
6 act as part of its approved water system plan or small water system  
7 management program. In preparing its regular water system plan update,  
8 a municipal water supplier with one thousand or more service  
9 connections must describe: (a) The projects, technologies, and other  
10 cost-effective measures that comprise its water conservation program;  
11 (b) improvements in the efficiency of water system use resulting from  
12 implementation of its conservation program over the previous six years;  
13 and (c) projected effects of delaying the use of existing inchoate  
14 rights over the next six years through the addition of further cost-  
15 effective water conservation measures before it may divert or withdraw  
16 further amounts of its inchoate right for beneficial use. When  
17 establishing or extending a surface or ground water right construction  
18 schedule under RCW 90.03.320, the department must take into  
19 consideration the public water system's use of conserved water.

20 **Sec. 6.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read  
21 as follows:

22 (1) Upon a showing satisfactory to the department that any  
23 appropriation has been perfected in accordance with the provisions of  
24 this chapter, it shall be the duty of the department to issue to the  
25 applicant a certificate stating such facts in a form to be prescribed  
26 by ((him)) the director, and such certificate shall thereupon be  
27 recorded with the department. Any original water right certificate  
28 issued, as provided by this chapter, shall be recorded with the  
29 department and thereafter, at the expense of the party receiving the  
30 same, be transmitted by the department ((transmitted)) to the county  
31 auditor of the county or counties where the distributing system or any  
32 part thereof is located, and be recorded in the office of such county  
33 auditor, and thereafter be transmitted to the owner thereof.

34 (2) Except as provided for the issuance of certificates under RCW  
35 90.03.240 and for the issuance of certificates following the approval  
36 of a change, transfer, or amendment under RCW 90.03.380 or 90.44.100,

1 the department shall not revoke or diminish a certificate for a surface  
2 or ground water right for municipal water supply purposes as defined in  
3 RCW 90.03.015 unless the certificate was issued with ministerial errors  
4 or was obtained through misrepresentation. The department may adjust  
5 such a certificate under this subsection if ministerial errors are  
6 discovered, but only to the extent necessary to correct the ministerial  
7 errors. The department may diminish the right represented by such a  
8 certificate if the certificate was obtained through a misrepresentation  
9 on the part of the applicant or permit holder, but only to the extent  
10 of the misrepresentation. The authority provided by this subsection  
11 does not include revoking, diminishing, or adjusting a certificate  
12 based on any change in policy regarding the issuance of such  
13 certificates that has occurred since the certificate was issued. This  
14 subsection may not be construed as providing any authority to the  
15 department to revoke, diminish, or adjust any other water right.

16 (3) This subsection applies to the water right represented by a  
17 water right certificate issued prior to the effective date of this  
18 section for municipal water supply purposes as defined in RCW 90.03.015  
19 where the certificate was issued based on an administrative policy for  
20 issuing such certificates once works for diverting or withdrawing and  
21 distributing water for municipal supply purposes were constructed  
22 rather than after the water had been placed to actual beneficial use.  
23 Such a water right is a right in good standing.

24 (4) After the effective date of this section, the department must  
25 issue a new certificate under subsection (1) of this section for a  
26 water right represented by a water right permit only for the perfected  
27 portion of a water right as demonstrated through actual beneficial use  
28 of water.

29 NEW SECTION. Sec. 7. A new section is added to chapter 70.119A  
30 RCW to read as follows:

31 (1) It is the intent of the legislature that the department  
32 establish water use efficiency requirements designed to ensure  
33 efficient use of water while maintaining water system financial  
34 viability, improving affordability of supplies, and enhancing system  
35 reliability.

1 (2) The requirements of this section shall apply to all municipal  
2 water suppliers and shall be tailored to be appropriate to system size,  
3 forecasted system demand, and system supply characteristics.

4 (3) For the purposes of this section:

5 (a) Water use efficiency includes conservation planning  
6 requirements, water distribution system leakage standards, and water  
7 conservation performance reporting requirements; and

8 (b) "Municipal water supplier" and "municipal water supply  
9 purposes" have the meanings provided by RCW 90.03.015.

10 (4) To accomplish the purposes of this section, the department  
11 shall adopt rules necessary to implement this section by December 31,  
12 2005. The department shall:

13 (a) Develop conservation planning requirements that ensure  
14 municipal water suppliers are: (i) Implementing programs to integrate  
15 conservation with water system operation and management; and (ii)  
16 identifying how to appropriately fund and implement conservation  
17 activities. Requirements shall apply to the conservation element of  
18 water system plans and small water system management programs developed  
19 pursuant to chapter 43.20 RCW. In establishing the conservation  
20 planning requirements the department shall review the current  
21 department conservation planning guidelines and include those elements  
22 that are appropriate for rule. Conservation planning requirements  
23 shall include but not be limited to:

24 (A) Selection of cost-effective measures to achieve a system's  
25 water conservation objectives. Requirements shall allow the municipal  
26 water supplier to select and schedule implementation of the best  
27 methods for achieving its conservation objectives;

28 (B) Evaluation of the feasibility of adopting and implementing  
29 water delivery rate structures that encourage water conservation;

30 (C) Evaluation of each system's water distribution system leakage  
31 and, if necessary, identification of steps necessary for achieving  
32 water distribution system leakage standards developed under (b) of this  
33 subsection;

34 (D) Collection and reporting of water consumption and source  
35 production and/or water purchase data. Data collection and reporting  
36 requirements shall be sufficient to identify water use patterns among  
37 utility customer classes, where applicable, and evaluate the

1 effectiveness of each system's conservation program. Requirements,  
2 including reporting frequency, shall be appropriate to system size and  
3 complexity. Reports shall be available to the public; and

4 (E) Establishment of minimum requirements for water demand forecast  
5 methodologies such that demand forecasts prepared by municipal water  
6 suppliers are sufficient for use in determining reasonably anticipated  
7 future water needs;

8 (b) Develop water distribution system leakage standards to ensure  
9 that municipal water suppliers are taking appropriate steps to reduce  
10 water system leakage rates or are maintaining their water distribution  
11 systems in a condition that results in leakage rates in compliance with  
12 the standards. Limits shall be developed in terms of percentage of  
13 total water produced and/or purchased and shall not be lower than ten  
14 percent. The department may consider alternatives to the percentage of  
15 total water supplied where alternatives provide a better evaluation of  
16 the water system's leakage performance. The department shall institute  
17 a graduated system of requirements based on levels of water system  
18 leakage. A municipal water supplier shall select one or more control  
19 methods appropriate for addressing leakage in its water system;

20 (c) Establish minimum requirements for water conservation  
21 performance reporting to assure that municipal water suppliers are  
22 regularly evaluating and reporting their water conservation  
23 performance. The objective of setting conservation goals is to enhance  
24 the efficient use of water by the water system customers. Performance  
25 reporting shall include:

26 (i) Requirements that municipal water suppliers adopt and achieve  
27 water conservation goals. The elected governing board or governing  
28 body of the water system shall set water conservation goals for the  
29 system. In setting water conservation goals the water supplier may  
30 consider historic conservation performance and conservation investment,  
31 customer base demographics, regional climate variations, forecasted  
32 demand and system supply characteristics, system financial viability,  
33 system reliability, and affordability of water rates. Conservation  
34 goals shall be established by the municipal water supplier in an open  
35 public forum;

36 (ii) Requirements that the municipal water supplier adopt schedules



1 for implementing conservation program elements and achieving  
2 conservation goals to ensure that progress is being made toward adopted  
3 conservation goals;

4 (iii) A reporting system for regular reviews of conservation  
5 performance against adopted goals. Performance reports shall be  
6 available to customers and the public. Requirements, including  
7 reporting frequency, shall be appropriate to system size and  
8 complexity;

9 (iv) Requirements that any system not meeting its water  
10 conservation goals shall develop a plan for modifying its conservation  
11 program to achieve its goals along with procedures for reporting  
12 performance to the department;

13 (v) If a municipal water supplier determines that further  
14 reductions in consumption are not reasonably achievable, it shall  
15 identify how current consumption levels will be maintained;

16 (d) Adopt rules that, to the maximum extent practical, utilize  
17 existing mechanisms and simplified procedures in order to minimize the  
18 cost and complexity of implementation and to avoid placing unreasonable  
19 financial burden on smaller municipal systems.

20 (5) The department shall establish an advisory committee to assist  
21 the department in developing rules for water use efficiency. The  
22 advisory committee shall include representatives from public water  
23 system customers, environmental interest groups, business interest  
24 groups, a representative cross-section of municipal water suppliers, a  
25 water utility conservation professional, tribal governments, the  
26 department of ecology, and any other members determined necessary by  
27 the department. The department may use the water supply advisory  
28 committee created pursuant to RCW 70.119A.160 augmented with additional  
29 participants as necessary to comply with this subsection to assist the  
30 department in developing rules.

31 (6) The department shall provide technical assistance upon request  
32 to municipal water suppliers and local governments regarding water  
33 conservation, which may include development of best management  
34 practices for water conservation programs, conservation landscape  
35 ordinances, conservation rate structures for public water systems, and  
36 general public education programs on water conservation.

1 (7) To ensure compliance with this section, the department shall  
2 establish a compliance process that incorporates a graduated approach  
3 employing the full range of compliance mechanisms available to the  
4 department.

5 (8) Prior to completion of rule making required in subsection (4)  
6 of this section, municipal water suppliers shall continue to meet the  
7 existing conservation requirements of the department and shall continue  
8 to implement their current water conservation programs.

9 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.20 RCW  
10 to read as follows:

11 In approving the water system plan of a public water system, the  
12 department shall ensure that water service to be provided by the system  
13 under the plan for any new industrial, commercial, or residential use  
14 is consistent with the requirements of any comprehensive plans or  
15 development regulations adopted under chapter 36.70A RCW or any other  
16 applicable comprehensive plan, land use plan, or development regulation  
17 adopted by a city, town, or county for the service area. A municipal  
18 water supplier, as defined in RCW 90.03.015, has a duty to provide  
19 retail water service within its retail service area if: (1) Its  
20 service can be available in a timely and reasonable manner; (2) the  
21 municipal water supplier has sufficient water rights to provide the  
22 service; (3) the municipal water supplier has sufficient capacity to  
23 serve the water in a safe and reliable manner as determined by the  
24 department of health; and (4) it is consistent with the requirements of  
25 any comprehensive plans or development regulations adopted under  
26 chapter 36.70A RCW or any other applicable comprehensive plan, land use  
27 plan, or development regulation adopted by a city, town, or county for  
28 the service area and, for water service by the water utility of a city  
29 or town, with the utility service extension ordinances of the city or  
30 town.

31 NEW SECTION. **Sec. 9.** A new section is added to chapter 90.82 RCW  
32 to read as follows:

33 (1) The timelines and interim milestones in a detailed  
34 implementation plan required by section 3, chapter . . . (Engrossed  
35 Second Substitute House Bill No. 1336), Laws of 2003 must address the

1 planned future use of existing water rights for municipal water supply  
2 purposes, as defined in RCW 90.03.015, that are inchoate, including how  
3 these rights will be used to meet the projected future needs identified  
4 in the watershed plan, and how the use of these rights will be  
5 addressed when implementing instream flow strategies identified in the  
6 watershed plan.

7 (2) The watershed planning unit or other authorized lead agency  
8 shall ensure that holders of water rights for municipal water supply  
9 purposes not currently in use are asked to participate in defining the  
10 timelines and interim milestones to be included in the detailed  
11 implementation plan.

12 (3) The department of health shall annually compile a list of water  
13 system plans and plan updates to be reviewed by the department during  
14 the coming year and shall consult with the departments of community,  
15 trade, and economic development, ecology, and fish and wildlife to:  
16 (a) Identify watersheds where further coordination is needed between  
17 water system planning and local watershed planning under this chapter;  
18 and (b) develop a work plan for conducting the necessary coordination.

19 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.54 RCW  
20 to read as follows:

21 The department shall prioritize the expenditure of funds and other  
22 resources for programs related to streamflow restoration in watersheds  
23 where the exercise of inchoate water rights may have a larger effect on  
24 streamflows and other water uses.

25 **Sec. 11.** RCW 90.48.495 and 1989 c 348 s 10 are each amended to  
26 read as follows:

27 The department of ecology shall require sewer plans to include a  
28 discussion of water conservation measures considered or underway that  
29 would reduce flows to the sewerage system and an analysis of their  
30 anticipated impact on public sewer service and treatment capacity.

31 **Sec. 12.** RCW 90.48.112 and 1997 c 444 s 9 are each amended to read  
32 as follows:

33 The evaluation of any plans submitted under RCW 90.48.110 must  
34 include consideration of opportunities for the use of reclaimed water

1 as defined in RCW 90.46.010. Wastewater plans submitted under RCW  
2 90.48.110 must include a statement describing how applicable  
3 reclamation and reuse elements will be coordinated as required under  
4 RCW 90.46.120(2).

5 **Sec. 13.** RCW 90.46.120 and 1997 c 444 s 1 are each amended to read  
6 as follows:

7 (1) The owner of a wastewater treatment facility that is reclaiming  
8 water with a permit issued under this chapter has the exclusive right  
9 to any reclaimed water generated by the wastewater treatment facility.  
10 Use and distribution of the reclaimed water by the owner of the  
11 wastewater treatment facility is exempt from the permit requirements of  
12 RCW 90.03.250 and 90.44.060. Revenues derived from the reclaimed water  
13 facility shall be used only to offset the cost of operation of the  
14 wastewater utility fund or other applicable source of system-wide  
15 funding.

16 (2) If the proposed use or uses of reclaimed water are intended to  
17 augment or replace potable water supplies or create the potential for  
18 the development of additional potable water supplies, such use or uses  
19 shall be considered in the development of the regional water supply  
20 plan or plans addressing potable water supply service by multiple water  
21 purveyors. The owner of a wastewater treatment facility that proposes  
22 to reclaim water shall be included as a participant in the development  
23 of such regional water supply plan or plans.

24 (3) Where opportunities for the use of reclaimed water exist within  
25 the period of time addressed by a water supply plan or coordinated  
26 water system plan developed under chapter 43.20 or 70.116 RCW, these  
27 plans must be developed and coordinated to ensure that opportunities  
28 for reclaimed water are evaluated. The requirements of this subsection  
29 (3) do not apply to water system plans developed under chapter 43.20  
30 RCW for utilities serving less than one thousand service connections.

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

33 (1) An unperfected surface water right for municipal water supply  
34 purposes or a portion thereof held by a municipal water supplier may be

1 changed or transferred in the same manner as provided by RCW 90.03.380  
2 for any purpose if:

3 (a) The supplier is in compliance with the terms of an approved  
4 water system plan or small water system management program under  
5 chapter 43.20 or 70.116 RCW that applies to the supplier, including  
6 those regarding water conservation;

7 (b) Instream flows have been established by rule for the water  
8 resource inventory area, as established in chapter 173-500 WAC as it  
9 exists on the effective date of this section, that is the source of the  
10 water for the transfer or change;

11 (c) A watershed plan has been approved for the water resource  
12 inventory area referred to in (b) of this subsection under chapter  
13 90.82 RCW and a detailed implementation plan has been completed that  
14 satisfies the requirements of section 3, chapter . . ., Laws of 2003  
15 (section 3, Engrossed Second Substitute House Bill No. 1336) or a  
16 watershed plan has been adopted after the effective date of this  
17 section for that water resource inventory area under RCW 90.54.040(1)  
18 and a detailed implementation plan has been completed that satisfies  
19 the requirements of section 3, chapter . . ., Laws of 2003 (section 3,  
20 Engrossed Second Substitute House Bill No. 1336); and

21 (d) Stream flows that satisfy the instream flows referred to in (b)  
22 of this subsection are met or the milestones for satisfying those  
23 instream flows required under (c) of this subsection are being met.

24 (2) If the criteria listed in subsection (1)(a) through (d) of this  
25 section are not satisfied, an unperfected surface water right for  
26 municipal water supply purposes or a portion thereof held by a  
27 municipal water supplier may nonetheless be changed or transferred in  
28 the same manner as provided by RCW 90.03.380 if the change or transfer  
29 is:

30 (a) To provide water for an instream flow requirement that has been  
31 established by the department by rule;

32 (b) Subject to stream flow protection or restoration requirements  
33 contained in: A federally approved habitat conservation plan under the  
34 federal endangered species act, 16 U.S.C. Sec. 1531 et seq., a  
35 hydropower license of the federal energy regulatory commission, or a  
36 watershed agreement established under section 16 of this act;

1 (c) For a water right that is subject to instream flow requirements  
2 or agreements with the department and the change or transfer is also  
3 subject to those instream flow requirements or agreements; or

4 (d) For resolving or alleviating a public health or safety  
5 emergency caused by a failing public water supply system currently  
6 providing potable water to existing users, as such a system is  
7 described in section 15 of this act, and if the change, transfer, or  
8 amendment is for correcting the actual or anticipated cause or causes  
9 of the public water system failure. Inadequate water rights for a  
10 public water system to serve existing hookups or to accommodate future  
11 population growth or other future uses do not constitute a public  
12 health or safety emergency.

13 (3) If the recipient of water under a change or transfer authorized  
14 by subsection (1) of this section is a water supply system, the  
15 receiving system must also be in compliance with the terms of an  
16 approved water system plan or small water system management program  
17 under chapter 43.20 or 70.116 RCW that applies to the system, including  
18 those regarding water conservation.

19 (4) The department must provide notice to affected tribes of any  
20 transfer or change proposed under this section.

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

23 To be considered a failing public water system for the purposes of  
24 section 14 of this act, the department of health, in consultation with  
25 the department and the local health authority, must make a  
26 determination that the system meets one or more of the following  
27 conditions:

28 (1) A public water system has failed, or is in danger of failing  
29 within two years, to meet state board of health standards for the  
30 delivery of potable water to existing users in adequate quantity or  
31 quality to meet basic human drinking, cooking, and sanitation needs or  
32 to provide adequate fire protection flows;

33 (2) The current water source has failed or will fail so that the  
34 public water system is or will become incapable of exercising its  
35 existing water rights to meet existing needs for drinking, cooking, and

1 sanitation purposes after all reasonable conservation efforts have been  
2 implemented; or

3 (3) A change in source is required to meet drinking water quality  
4 standards and avoid unreasonable treatment costs, or the state  
5 department of health determines that the existing source of supply is  
6 unacceptable for human use.

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

9 (1) On a pilot project basis, the department may enter into a  
10 watershed agreement with one or more municipal water suppliers in water  
11 resource inventory area number one to meet the objectives established  
12 in a water resource management program approved or being developed  
13 under chapter 90.82 RCW with the consent of the initiating governments  
14 of the water resource inventory area. The term of an agreement may not  
15 exceed ten years, but the agreement may be renewed or amended upon  
16 agreement of the parties.

17 (2) A watershed agreement must be consistent with:

18 (a) Growth management plans developed under chapter 36.70A RCW  
19 where these plans are adopted and in effect;

20 (b) Water supply plans and small water system management programs  
21 approved under chapter 43.20 or 70.116 RCW;

22 (c) Coordinated water supply plans approved under chapter 70.116  
23 RCW; and

24 (d) Water use efficiency and conservation requirements and  
25 standards established by the state department of health or such  
26 requirements and standards as are provided in an approved watershed  
27 plan, whichever are the more stringent.

28 (3) A watershed agreement must:

29 (a) Require the public water system operated by the participating  
30 municipal water supplier to meet obligations under the watershed plan;

31 (b) Establish performance measures and timelines for measures to be  
32 completed;

33 (c) Provide for monitoring of stream flows and metering of water  
34 use as needed to ensure that the terms of the agreement are met; and

35 (d) Require annual reports from the water users regarding  
36 performance under the agreement.

1 (4) As needed to implement watershed agreement activities, the  
2 department may provide or receive funding, or both, under its existing  
3 authorities.

4 (5) The department must provide opportunity for public review of a  
5 proposed agreement before it is executed. The department must make  
6 proposed and executed watershed agreements and annual reports available  
7 on the department's internet web site.

8 (6) The department must consult with affected local governments and  
9 the state departments of health and fish and wildlife before executing  
10 an agreement.

11 (7) Before executing a watershed agreement, the department must  
12 conduct a government-to-government consultation with affected tribal  
13 governments. The municipal water suppliers operating the public water  
14 systems that are proposing to enter into the agreements must be invited  
15 to participate in the consultations. During these consultations, the  
16 department and the municipal water suppliers shall explore the  
17 potential interest of the tribal governments or governments in  
18 participating in the agreement.

19 (8) Any person aggrieved by the department's failure to satisfy the  
20 requirements in subsection (3) of this section as embodied in the  
21 department's decision to enter into a watershed agreement under this  
22 section may, within thirty days of the execution of such an agreement,  
23 appeal the department's decision to the pollution control hearings  
24 board under chapter 43.21B RCW.

25 (9) Any projects implemented by a municipal water system under the  
26 terms of an agreement reached under this section may be continued and  
27 maintained by the municipal water system after the agreement expires or  
28 is terminated as long as the conditions of the agreement under which  
29 they were implemented continue to be met.

30 (10) Before December 31, 2003, and December 31, 2004, the  
31 department must report to the appropriate committees of the legislature  
32 the results of the pilot project provided for in this section. Based  
33 on the experience of the pilot project, the department must offer any  
34 suggested changes in law that would improve, facilitate, and maximize  
35 the implementation of watershed plans adopted under this chapter.



1        NEW SECTION.    **Sec. 17.**    A new section is added to chapter 90.03 RCW  
2 to read as follows:

3        The department may not enter into new watershed agreements under  
4 section 16 of this act after July 1, 2008.    This section does not apply  
5 to the renewal of agreements in effect prior to that date.

6        **Sec. 18.**    RCW 70.119A.110 and 1991 c 304 s 5 are each amended to  
7 read as follows:

8        (1) No person may operate a group A public water system unless the  
9 person first submits an application to the department and receives an  
10 operating permit as provided in this section.    A new application must  
11 be submitted upon any change in ownership of the system.    Any person  
12 operating a public water system on July 28, 1991, may continue to  
13 operate the system until the department takes final action, including  
14 any time necessary for a hearing under subsection (3) of this section,  
15 on a permit application submitted by the person operating the system  
16 under the rules adopted by the department to implement this section.

17        (2) The department may require that each application include the  
18 information that is reasonable and necessary to determine that the  
19 system complies with applicable standards and requirements of the  
20 federal safe drinking water act, state law, and rules adopted by the  
21 department or by the state board of health.

22        (3) Following its review of the application, its supporting  
23 material, and any information received by the department in its  
24 investigation of the application, the department shall issue or deny  
25 the operating permit.    The department shall act on initial permit  
26 applications as expeditiously as possible, and shall in all cases  
27 either grant or deny the application within one hundred twenty days of  
28 receipt of the application or of any supplemental information required  
29 to complete the application.    The applicant for a permit shall be  
30 entitled to file an appeal in accordance with chapter 34.05 RCW if the  
31 department denies the initial or subsequent applications or imposes  
32 conditions or requirements upon the operator.    Any operator of a public  
33 water system that requests a hearing may continue to operate the system  
34 until a decision is issued after the hearing.

35        (4) At the time of initial permit application or at the time of  
36 permit renewal the department may impose such permit conditions,

1 requirements for system improvements, and compliance schedules as it  
2 determines are reasonable and necessary to ensure that the system will  
3 provide a safe and reliable water supply to its users.

4 (5) Operating permits shall be issued for a term of one year, and  
5 shall be renewed annually, unless the operator fails to apply for a new  
6 permit or the department finds good cause to deny the application for  
7 renewal.

8 (6) Each application shall be accompanied by an annual fee as  
9 follows:

10 (a) The annual fee for public water supply systems serving fifteen  
11 to forty-nine service connections shall be twenty-five dollars.

12 (b) The annual fee for public water supply systems serving fifty to  
13 three thousand three hundred thirty-three service connections shall be  
14 based on a uniform per service connection fee of one dollar and fifty  
15 cents per service connection.

16 (c) The annual fee for public water supply systems serving three  
17 thousand three hundred thirty-four to fifty-three thousand three  
18 hundred thirty-three service connections shall be based on a uniform  
19 per service connection fee of one dollar and fifty cents per service  
20 connection plus ten cents for each service connection in excess of  
21 three thousand three hundred thirty-three service connections.

22 (d) The annual fee for public water supply systems serving fifty-  
23 three thousand three hundred thirty-four or more service connections  
24 shall be ten thousand dollars.

25 (e) In addition to the fees under (a) through (d) of this  
26 subsection, the department may charge an additional one-time fee of  
27 five dollars for each service connection in a new water system.

28 (f) Until June 30, 2007, in addition to the fees under (a) through  
29 (e) of this subsection, the department may charge municipal water  
30 suppliers, as defined in RCW 90.03.015, an additional annual fee  
31 equivalent to twenty-five cents for each residential service connection  
32 for the purpose of funding the water conservation activities in section  
33 7 of this act.

34 (7) The department may phase-in the implementation for any group of  
35 systems provided the schedule for implementation is established by  
36 rule. Prior to implementing the operating permit requirement on water  
37 systems having less than five hundred service connections, the

1 department shall form a committee composed of persons operating these  
2 systems. The committee shall be composed of the department of health,  
3 two operators of water systems having under one hundred connections,  
4 two operators of water systems having between one hundred and two  
5 hundred service connections, two operators of water systems having  
6 between two hundred and three hundred service connections, two  
7 operators of water systems having between three hundred and four  
8 hundred service connections, two operators of water systems having  
9 between four hundred and five hundred service connections, and two  
10 county public health officials. The members shall be chosen from  
11 different geographic regions of the state. This committee shall  
12 develop draft rules to implement this section. The draft rules will  
13 then be subject to the rule-making procedures in accordance with  
14 chapter 34.05 RCW.

15 (8) The department shall notify existing public water systems of  
16 the requirements of RCW 70.119A.030, 70.119A.060, and this section at  
17 least one hundred twenty days prior to the date that an application for  
18 a permit is required pursuant to RCW 70.119A.030, 70.119A.060, and this  
19 section.

20 (9) The department shall issue one operating permit to any approved  
21 satellite system management agency. Operating permit fees for approved  
22 satellite system management agencies shall be one dollar per connection  
23 per year for the total number of connections under the management of  
24 the approved satellite agency. The department shall define by rule the  
25 meaning of the term "satellite system management agency." If a  
26 statutory definition of this term exists, then the department shall  
27 adopt by rule a definition consistent with the statutory definition.

28 (10) For purposes of this section, "group A public water system"  
29 and "system" mean those water systems with fifteen or more service  
30 connections, regardless of the number of people; or a system serving an  
31 average of twenty-five or more people per day for sixty or more days  
32 within a calendar year, regardless of the number of service  
33 connections.

34 NEW SECTION. **Sec. 19.** If any provision of this act or its  
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected."

**E2SHB 1338** - H AMD 578

By Representative Linville

**ADOPTED 06/05/2003**

3 On page 1, line 2 of the title, after "water;" strike the remainder  
4 of the title and insert "amending RCW 90.03.015, 90.03.260, 90.03.386,  
5 90.03.330, 90.48.495, 90.48.112, 90.46.120, and 70.119A.110; adding new  
6 sections to chapter 90.03 RCW; adding a new section to chapter 70.119A  
7 RCW; adding a new section to chapter 43.20 RCW; adding a new section to  
8 chapter 90.82 RCW; and adding a new section to chapter 90.54 RCW."

**EFFECT:** Municipal Water Supply Purposes; Other Uses; Certificates.

The amendment: Requires a water right used for "governmental or governmental proprietary purposes" to be held by a certain specified forms of government to qualify as a municipal purpose water right, and allows uses of other water rights held by a qualifying governmental supplier for uses generally associated with use within a municipality to be use for "municipal water supply purposes;" requires water used under a municipal water right to have been diverted or withdrawn before it may be used for certain environmental purposes without a formal modification of the right; no longer requires a municipal water right certificate issued under the pumps and pipes principle to be used in a manner that is consistent with that principle as it existed when the certificate was issued.

**Place of Use; Conservation Measures.**

The amendment clarifies that an approval of a water system service area alters the place of use of a municipal water right for the service area if a part of the service area would otherwise be outside of that service area, and more clearly identifies the watershed plans with which an expanded place of use must not be inconsistent; states that a municipal supplier with 1,000 or more service connections must describe, in preparing its regular water system plan updates, its conservation measures and the improvements in efficiency resulting from them in the last six years and projected effects of conservation on delaying its use of inchoate water rights (rather than document an improvement in efficiency) before diverting or withdrawing further inchoate water. The amendment alters the conservation requirements for

municipal suppliers and the DOH's conservation rule-making authority. The rules: Must require suppliers to identify how to fund and implement conservation activities; must require conservation plans to be modified if conservation goals are not being met (rather than establish criteria for determining whether a supplier is fulfilling its conservation objectives); must not establish a state leakage rate standard that is lower than ten percent; must use existing mechanisms to minimize costs and avoid placing unreasonable financial burdens on smaller water systems; and (though they must still establish a compliance process that incorporates a graduated enforcement approach) are no longer required to use the graduated approach specified in the water code. If a supplier determines that further reductions in consumption are not reasonably achievable, it must identify how current levels of conservation will be maintained.

System Plan Review; Duty to Serve.

The amendment: replaces a requirement that the DOH consult certain other state agencies when it reviews water system plans with a requirement that it annually compile lists of water system plans to be reviewed in the next year and to consult with certain other state agencies regarding certain coordination needed as part of the review; changes the "duty to serve" requirement of a public water system by: no longer referring to it as being the "first choice of supply" for new residential water uses; applying the duty only to the retail service area of municipal suppliers (rather than the service areas of all public water systems) and establishing the duty if it is available in a timely and reasonable manner and if the supplier has sufficient capacity to serve the water in a safe and reliable manner as determined by the DOH (rather than if it is available within certain specified costs and in a specified period of time).

Inchoate Transfers; Pilot Project.

The amendment establishes the authority of a municipal water supplier to transfer inchoate surface water rights under certain specified conditions; requires detailed implementation plans developed under Phase IV watershed planning to address the planned future use of inchoate municipal water rights; and requires one (not up to two) pilot area for creating watershed agreements and requires it to be in WRIA No. 1, with the consent of certain local entities.

Funding.

The amendment replaces a requirement that the bill be implemented within existing funding with the authority of the DOH to charge municipal suppliers an annual fee of 25 cents per residential connection or its equivalent until June 30, 2007, to provide funding.

Other.

The amendment deletes: the intent section; provisions protecting a water right from relinquishment while a municipal supplier diligently seeks approval to change the right to municipal use; and defining "municipal water supplier" and "municipal water supply purposes" for the water right registration and relinquishment laws.

The amendment allows a municipal water right to be used to implement environmental obligations of a Water Resources Act watershed plan without a formal modification of the right only if the plan is adopted after the effective date of the bill. The amendment also provides the following clarifications: It indicates that the provisions of the bill authorizing rights declared to be for municipal purposes to be so identified do not allow other rights or parts of rights held by a municipal supplier to be so identified without formal

changes or transfers of those rights; it conditions the conversion of the service area for a municipal water supplier's water system to its place of use on the conversion's not being inconsistent with an approved watershed plan only if a watershed plan has been approved for the area; and it clarifies the effect of the bill's prohibition on modifying municipal certificates on DOE's authority to change other certificates.

--- END ---