

**E2SHB 1338 - S AMD 449**

By Senator Morton

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

33 (1) Each application for permit to appropriate water shall set  
34 forth the name and post office address of the applicant, the source of

1 water supply, the nature and amount of the proposed use, the time  
2 during which water will be required each year, the location and  
3 description of the proposed ditch, canal, or other work, the time  
4 within which the completion of the construction and the time for the  
5 complete application of the water to the proposed use.

6 (2) If for agricultural purposes, ((it)) the application shall give  
7 the legal subdivision of the land and the acreage to be irrigated, as  
8 near as may be, and the amount of water expressed in acre feet to be  
9 supplied per season. If for power purposes, it shall give the nature  
10 of the works by means of which the power is to be developed, the head  
11 and amount of water to be utilized, and the uses to which the power is  
12 to be applied.

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

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

26 (5) If for municipal water supply, ((it)) the application shall  
27 give the present population to be served, and, as near as may be  
28 estimated, the future requirement of the municipality. However, for a  
29 municipal water supplier that has an approved water system plan under  
30 chapter 43.20 RCW or an approval from the department of health to serve  
31 a specified number of service connections, the population figures in  
32 the application or any subsequent water right document are not an  
33 attribute limiting exercise of the water right as long as the  
34 population to be provided water under the right is consistent with the  
35 approved water system plan or specified number.

36 (6) If for mining purposes, ((it)) the application shall give the

1 nature of the mines to be served and the method of supplying and  
2 utilizing the water; also their location by legal subdivisions.

3 (7) All applications shall be accompanied by such maps and  
4 drawings, in duplicate, and such other data, as may be required by the  
5 department, and such accompanying data shall be considered as a part of  
6 the application.

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

9 (1) Within service areas established pursuant to chapter(~~(s)~~) 43.20  
10 (~~and~~) or 70.116 RCW, the department of ecology and the department of  
11 health shall coordinate approval procedures to ensure compliance and  
12 consistency with the approved water system plan or small water system  
13 management program.

14 (2) The effect of the department of health's approval of a planning  
15 or engineering document that describes a municipal water supplier's  
16 service area under chapter 43.20 RCW, or the local legislative  
17 authority's approval of service area boundaries in accordance with  
18 procedures adopted pursuant to chapter 70.116 RCW, is that the place of  
19 use of a surface water right or ground water right used by the supplier  
20 includes any portion of the approved service area that was not  
21 previously within the place of use for the water right if the supplier  
22 is in compliance with the terms of the water system plan or small water  
23 system management program, including those regarding water  
24 conservation, and the alteration of the place of use is not  
25 inconsistent, regarding an area added to the place of use, with: Any  
26 comprehensive plans or development regulations adopted under chapter  
27 36.70A RCW; any other applicable comprehensive plan, land use plan, or  
28 development regulation adopted by a city, town, or county; or any  
29 watershed plan approved under chapter 90.82 RCW, or a comprehensive  
30 watershed plan adopted under RCW 90.54.040(1) after the effective date  
31 of this section, if such a watershed plan has been approved for the  
32 area.

33 (3) A municipal water supplier must implement cost-effective water  
34 conservation in accordance with the requirements of section 7 of this  
35 act as part of its approved water system plan or small water system  
36 management program. In preparing its regular water system plan update,

1 a municipal water supplier with one thousand or more service  
2 connections must describe: (a) The projects, technologies, and other  
3 cost-effective measures that comprise its water conservation program;  
4 (b) improvements in the efficiency of water system use resulting from  
5 implementation of its conservation program over the previous six years;  
6 and (c) projected effects of delaying the use of existing inchoate  
7 rights over the next six years through the addition of further cost-  
8 effective water conservation measures before it may divert or withdraw  
9 further amounts of its inchoate right for beneficial use. When  
10 establishing or extending a surface or ground water right construction  
11 schedule under RCW 90.03.320, the department must take into  
12 consideration the public water system's use of conserved water.

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

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

27 (2) Except as provided for the issuance of certificates under RCW  
28 90.03.240 and for the issuance of certificates following the approval  
29 of a change, transfer, or amendment under RCW 90.03.380 or 90.44.100,  
30 the department shall not revoke or diminish a certificate for a surface  
31 or ground water right for municipal water supply purposes as defined in  
32 RCW 90.03.015 unless the certificate was issued with ministerial errors  
33 or was obtained through misrepresentation. The department may adjust  
34 such a certificate under this subsection if ministerial errors are  
35 discovered, but only to the extent necessary to correct the ministerial  
36 errors. The department may diminish the right represented by such a

1 certificate if the certificate was obtained through a misrepresentation  
2 on the part of the applicant or permit holder, but only to the extent  
3 of the misrepresentation. The authority provided by this subsection  
4 does not include revoking, diminishing, or adjusting a certificate  
5 based on any change in policy regarding the issuance of such  
6 certificates that has occurred since the certificate was issued. This  
7 subsection may not be construed as providing any authority to the  
8 department to revoke, diminish, or adjust any other water right.

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

17 (4) After the effective date of this section, the department must  
18 issue a new certificate under subsection (1) of this section for a  
19 water right represented by a water right permit only for the perfected  
20 portion of a water right as demonstrated through actual beneficial use  
21 of water.

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

24 (1) It is the intent of the legislature that the department  
25 establish water use efficiency requirements designed to ensure  
26 efficient use of water while maintaining water system financial  
27 viability, improving affordability of supplies, and enhancing system  
28 reliability.

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

32 (3) For the purposes of this section:

33 (a) Water use efficiency includes conservation planning  
34 requirements, water distribution system leakage standards, and water  
35 conservation performance reporting requirements; and

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

3 (4) To accomplish the purposes of this section, the department  
4 shall adopt rules necessary to implement this section by December 31,  
5 2005. The department shall:

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

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

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

23 (C) Evaluation of each system's water distribution system leakage  
24 and, if necessary, identification of steps necessary for achieving  
25 water distribution system leakage standards developed under (b) of this  
26 subsection;

27 (D) Collection and reporting of water consumption and source  
28 production and/or water purchase data. Data collection and reporting  
29 requirements shall be sufficient to identify water use patterns among  
30 utility customer classes, where applicable, and evaluate the  
31 effectiveness of each system's conservation program. Requirements,  
32 including reporting frequency, shall be appropriate to system size and  
33 complexity. Reports shall be available to the public; and

34 (E) Establishment of minimum requirements for water demand forecast  
35 methodologies such that demand forecasts prepared by municipal water  
36 suppliers are sufficient for use in determining reasonably anticipated  
37 future water needs;

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

13 (c) Establish minimum requirements for water conservation  
14 performance reporting to assure that municipal water suppliers are  
15 regularly evaluating and reporting their water conservation  
16 performance. The objective of setting conservation goals is to enhance  
17 the efficient use of water by the water system customers. Performance  
18 reporting shall include:

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

29 (ii) Requirements that the municipal water supplier adopt schedules  
30 for implementing conservation program elements and achieving  
31 conservation goals to ensure that progress is being made toward adopted  
32 conservation goals;

33 (iii) A reporting system for regular reviews of conservation  
34 performance against adopted goals. Performance reports shall be  
35 available to customers and the public. Requirements, including  
36 reporting frequency, shall be appropriate to system size and  
37 complexity;

1 (iv) Requirements that any system not meeting its water  
2 conservation goals shall develop a plan for modifying its conservation  
3 program to achieve its goals along with procedures for reporting  
4 performance to the department;

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

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

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

23 (6) The department shall provide technical assistance upon request  
24 to municipal water suppliers and local governments regarding water  
25 conservation, which may include development of best management  
26 practices for water conservation programs, conservation landscape  
27 ordinances, conservation rate structures for public water systems, and  
28 general public education programs on water conservation.

29 (7) To ensure compliance with this section, the department shall  
30 establish a compliance process that incorporates a graduated approach  
31 employing the full range of compliance mechanisms available to the  
32 department.

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

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

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

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

25        (1) The timelines and interim milestones in a detailed  
26 implementation plan required by section 3, chapter . . . (Engrossed  
27 Second Substitute House Bill No. 1336), Laws of 2003 must address the  
28 planned future use of existing water rights for municipal water supply  
29 purposes, as defined in RCW 90.03.015, that are inchoate, including how  
30 these rights will be used to meet the projected future needs identified  
31 in the watershed plan, and how the use of these rights will be  
32 addressed when implementing instream flow strategies identified in the  
33 watershed plan.

34        (2) The watershed planning unit or other authorized lead agency  
35 shall ensure that holders of water rights for municipal water supply

1 purposes not currently in use are asked to participate in defining the  
2 timelines and interim milestones to be included in the detailed  
3 implementation plan.

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

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

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

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

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

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

25 The evaluation of any plans submitted under RCW 90.48.110 must  
26 include consideration of opportunities for the use of reclaimed water  
27 as defined in RCW 90.46.010. Wastewater plans submitted under RCW  
28 90.48.110 must include a statement describing how applicable  
29 reclamation and reuse elements will be coordinated as required under  
30 RCW 90.46.120(2).

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

33 (1) The owner of a wastewater treatment facility that is reclaiming

1 water with a permit issued under this chapter has the exclusive right  
2 to any reclaimed water generated by the wastewater treatment facility.  
3 Use and distribution of the reclaimed water by the owner of the  
4 wastewater treatment facility is exempt from the permit requirements of  
5 RCW 90.03.250 and 90.44.060. Revenues derived from the reclaimed water  
6 facility shall be used only to offset the cost of operation of the  
7 wastewater utility fund or other applicable source of system-wide  
8 funding.

9 (2) If the proposed use or uses of reclaimed water are intended to  
10 augment or replace potable water supplies or create the potential for  
11 the development of additional potable water supplies, such use or uses  
12 shall be considered in the development of the regional water supply  
13 plan or plans addressing potable water supply service by multiple water  
14 purveyors. The owner of a wastewater treatment facility that proposes  
15 to reclaim water shall be included as a participant in the development  
16 of such regional water supply plan or plans.

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

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

26 (1) An unperfected surface water right for municipal water supply  
27 purposes or a portion thereof held by a municipal water supplier may be  
28 changed or transferred in the same manner as provided by RCW 90.03.380  
29 for any purpose if:

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

34 (b) Instream flows have been established by rule for the water  
35 resource inventory area, as established in chapter 173-500 WAC as it

1 exists on the effective date of this section, that is the source of the  
2 water for the transfer or change;

3 (c) A watershed plan has been approved for the water resource  
4 inventory area referred to in (b) of this subsection under chapter  
5 90.82 RCW and a detailed implementation plan has been completed that  
6 satisfies the requirements of section 3, chapter . . ., Laws of 2003  
7 (section 3, Engrossed Second Substitute House Bill No. 1336) or a  
8 watershed plan has been adopted after the effective date of this  
9 section for that water resource inventory area under RCW 90.54.040(1)  
10 and a detailed implementation plan has been completed that satisfies  
11 the requirements of section 3, chapter . . ., Laws of 2003 (section 3,  
12 Engrossed Second Substitute House Bill No. 1336); and

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

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

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

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

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

32 (d) For resolving or alleviating a public health or safety  
33 emergency caused by a failing public water supply system currently  
34 providing potable water to existing users, as such a system is  
35 described in section 15 of this act, and if the change, transfer, or  
36 amendment is for correcting the actual or anticipated cause or causes  
37 of the public water system failure. Inadequate water rights for a

1 public water system to serve existing hookups or to accommodate future  
2 population growth or other future uses do not constitute a public  
3 health or safety emergency.

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

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

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

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

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

24 (2) The current water source has failed or will fail so that the  
25 public water system is or will become incapable of exercising its  
26 existing water rights to meet existing needs for drinking, cooking, and  
27 sanitation purposes after all reasonable conservation efforts have been  
28 implemented; or

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

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

35 (1) On a pilot project basis, the department may enter into a

1 watershed agreement with one or more municipal water suppliers in water  
2 resource inventory area number one to meet the objectives established  
3 in a water resource management program approved or being developed  
4 under chapter 90.82 RCW with the consent of the initiating governments  
5 of the water resource inventory area. The term of an agreement may not  
6 exceed ten years, but the agreement may be renewed or amended upon  
7 agreement of the parties.

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

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

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

13 (c) Coordinated water supply plans approved under chapter 70.116  
14 RCW; and

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

19 (3) A watershed agreement must:

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

22 (b) Establish performance measures and timelines for measures to be  
23 completed;

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

26 (d) Require annual reports from the water users regarding  
27 performance under the agreement.

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

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

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

1 (7) Before executing a watershed agreement, the department must  
2 conduct a government-to-government consultation with affected tribal  
3 governments. The municipal water suppliers operating the public water  
4 systems that are proposing to enter into the agreements must be invited  
5 to participate in the consultations. During these consultations, the  
6 department and the municipal water suppliers shall explore the  
7 potential interest of the tribal governments or governments in  
8 participating in the agreement.

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

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

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

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

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

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

33 (1) No person may operate a group A public water system unless the  
34 person first submits an application to the department and receives an  
35 operating permit as provided in this section. A new application must

1 be submitted upon any change in ownership of the system. Any person  
2 operating a public water system on July 28, 1991, may continue to  
3 operate the system until the department takes final action, including  
4 any time necessary for a hearing under subsection (3) of this section,  
5 on a permit application submitted by the person operating the system  
6 under the rules adopted by the department to implement this section.

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

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

25 (4) At the time of initial permit application or at the time of  
26 permit renewal the department may impose such permit conditions,  
27 requirements for system improvements, and compliance schedules as it  
28 determines are reasonable and necessary to ensure that the system will  
29 provide a safe and reliable water supply to its users.

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

34 (6) Each application shall be accompanied by an annual fee as  
35 follows:

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

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

5 (c) The annual fee for public water supply systems serving three  
6 thousand three hundred thirty-four to fifty-three thousand three  
7 hundred thirty-three service connections shall be based on a uniform  
8 per service connection fee of one dollar and fifty cents per service  
9 connection plus ten cents for each service connection in excess of  
10 three thousand three hundred thirty-three service connections.

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

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

17 (f) Until June 30, 2007, in addition to the fees under (a) through  
18 (e) of this subsection, the department may charge municipal water  
19 suppliers, as defined in RCW 90.03.015, an additional annual fee  
20 equivalent to twenty-five cents for each residential service connection  
21 for the purpose of funding the water conservation activities in section  
22 7 of this act.

23 (7) The department may phase-in the implementation for any group of  
24 systems provided the schedule for implementation is established by  
25 rule. Prior to implementing the operating permit requirement on water  
26 systems having less than five hundred service connections, the  
27 department shall form a committee composed of persons operating these  
28 systems. The committee shall be composed of the department of health,  
29 two operators of water systems having under one hundred connections,  
30 two operators of water systems having between one hundred and two  
31 hundred service connections, two operators of water systems having  
32 between two hundred and three hundred service connections, two  
33 operators of water systems having between three hundred and four  
34 hundred service connections, two operators of water systems having  
35 between four hundred and five hundred service connections, and two  
36 county public health officials. The members shall be chosen from  
37 different geographic regions of the state. This committee shall

1 develop draft rules to implement this section. The draft rules will  
2 then be subject to the rule-making procedures in accordance with  
3 chapter 34.05 RCW.

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

9 (9) The department shall issue one operating permit to any approved  
10 satellite system management agency. Operating permit fees for approved  
11 satellite system management agencies shall be one dollar per connection  
12 per year for the total number of connections under the management of  
13 the approved satellite agency. The department shall define by rule the  
14 meaning of the term "satellite system management agency." If a  
15 statutory definition of this term exists, then the department shall  
16 adopt by rule a definition consistent with the statutory definition.

17 (10) For purposes of this section, "group A public water system"  
18 and "system" mean those water systems with fifteen or more service  
19 connections, regardless of the number of people; or a system serving an  
20 average of twenty-five or more people per day for sixty or more days  
21 within a calendar year, regardless of the number of service  
22 connections.

23 NEW SECTION. **Sec. 19.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected."

**E2SHB 1338** - S AMD 449  
By Senator Morton

27 On page 1, line 2 of the title, after "water;" strike the remainder  
28 of the title and insert "amending RCW 90.03.015, 90.03.260, 90.03.386,  
29 90.03.330, 90.48.495, 90.48.112, 90.46.120, and 70.119A.110; adding new

1 sections to chapter 90.03 RCW; adding a new section to chapter 70.119A  
2 RCW; adding a new section to chapter 43.20 RCW; adding a new section to  
3 chapter 90.82 RCW; and adding a new section to chapter 90.54 RCW."

--- END ---