
**Agriculture & Natural Resources
Committee**

HB 2508

Brief Description: Regarding water right processing improvements.

Sponsors: Representatives Blake and Chandler; by request of Department of Ecology.

Brief Summary of Bill

- Authorizes a coordinated cost-reimbursement process for water right applications.
- Establishes criteria for qualifying as a certified water right examiner.
- Creates a "project-dependent" water right application status.

Hearing Date: 1/15/10

Staff: Jaclyn Ford (786-7339).

Background:

An applicant for a water right pending before the Department of Ecology (DOE) may enter into a cost-reimbursement agreement with the DOE to expedite review of the application. The applicant must agree to pay for, or as part of a cooperative effort agree to pay for, the cost of hiring a private consultant to evaluate their water right application plus any senior applications from the same source of water.

The DOE retains the authority to render a final decision on the application, but the consultant conducts a site investigation, performs the environmental and hydrogeologic analyses, identifies whether the water is available or would impair other water users, prepares a report with his or her findings and a recommendation whether to approve or deny the application.

An applicant may appeal a decision if he or she disagrees. In such cases, the applicant is responsible for paying for the legal costs of his or her own appeal. The DOE's decisions on water rights are defended by the state Office of the Attorney General. If a third party appeals a

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decision, the applicant may be responsible for reimbursing the state for the cost of defending the decision before the Pollution Control Hearings Board (PCHB). The DOE may negotiate further reimbursement if the decision is appealed beyond the PCHB.

Summary of Bill:

Cost-Reimbursement

Any applicant for a new withdrawal, or a change, transfer, or amendment of a water right may initiate a cost-reimbursement agreement with the DOE to provide expedited review of the application. A cost-reimbursement agreement may be initiated if the applicant agrees to pay for the cost of processing his or her application and all other applications from the same source of supply that were filed prior to the date of when the applicant filed. A water source may include surface water only, ground water only, or surface and ground water together if the DOE believes they are hydraulically connected. When determining the boundaries of a water source, the DOE must also consider technical information submitted by the applicant.

The requirement to pay for the cost of all other senior applications from the same source of supply does not apply if: (1) the application would not diminish the water available to earlier pending applicants from the same source of supply; or (2) the applicant agrees to pay for the cost of processing his or her application as part of a coordinated cost-reimbursement agreement.

The DOE may initiate a coordinated cost-reimbursement project: (1) on its own volition; (2) upon receipt of a written request from an applicant; (3) upon receipt of a written request or recommendation from a watershed planning unit; or (4) upon receipt of a resolution of a county legislative authority with jurisdiction over the area in which the water source is located.

If the DOE determines that the public interest is best served by initiation of a coordinated cost-reimbursement project, they must notify in writing all persons who have pending applications for a new appropriation or withdrawal of water from that particular source. The notice must be made by way of mail and by publication in a newspaper of general circulation in the area where affected properties are located. The notification must inform those applicants that a coordinated cost-reimbursement process is being initiated and offer the opportunity to voluntarily participate in funding a cost-reimbursement contractor to investigate and make recommendations to the DOE regarding the disposition of the applications. The notice must also provide the estimated cost for having an application processed using a cost-reimbursement contractor. The notice must provide at least 60 days for the applicants to respond in writing as to their interest in participating in the coordinated cost-reimbursement processing of their applications. The DOE must adjust the estimated costs for each participant based on those applicants electing to participate.

For any applicant who elects not to participate in the coordinated cost-reimbursement process or who fails to respond in writing within the time allowed, the DOE must retain the application on file until the DOE is able to process it. Coordinated cost-reimbursement applies only to the sequence of application processing and does not affect the relative priority date of any resulting water rights.

The DOE must competitively select contractors who are qualified by training and experience to investigate and make recommendations on the disposition of water rights applications. The contractor list must be renewed at least every six years, though the DOE may add qualified cost-

reimbursement contractors to the list at any time. When assigned an application or set of applications to investigate, the contractor must document his or her findings and recommended disposition in the form of written draft reports of examination. The DOE may modify the reports of examination submitted by the contractor. The DOE's decision on a permit application is final unless it is appealed to the PCHB. Each applicant is responsible for any appeal costs related to the processing of his or her application.

Water Right Examiners

The DOE must establish and maintain a list of certified water right examiners. Certified water right examiners on the list are eligible to perform final proof examinations of permitted water uses leading to the issuance of a water right certificate. In order to qualify for inclusion on the list, an individual must be registered in Washington as a professional engineer, professional land surveyor, or registered hydrogeologist. Qualified individuals must also pass a written examination demonstrating knowledge and competency in specific water-related topics prior to being certified by the DOE. The DOE may suspend or revoke a water right examiner's certification based on poor performance, malfeasance, failure to acquire continuing education credits, or excessive complaints from the examiner's customers. The DOE may also require the retesting of an examiner. The DOE must establish and collect fees for the examination, certification, and renewal of certification of water right examiners.

Each certified water right examiner must be bonded for at least \$50,000.

In order to receive a final water right certificate, the permit holder must secure the services of a certified water right examiner who has been tested and certified by the DOE. The examiner must carry out a final examination of the project to verify its completion and to determine and document for the permit holder, and the DOE, the amount of water that has been appropriated for beneficial use, the location of diversion or withdrawal and conveyance facilities, and the actual place of use.

The DOE may waive the requirement to secure the services of a certified water right examiner in situations in which the DOE deems it unnecessary for purposes of issuing a certificate of water right.

Water Impoundments and Resource Management Techniques

If the DOE has determined that no water remains available for new appropriation from a water source, the DOE must notify all persons holding pending applications to divert water from that source. That notice must be made by way of mail and by publication in a newspaper of general circulation in the area where affected properties are located. Within three years after the date notification is mailed, the DOE may issue an order requiring each applicant to amend their application to include provisions for a water impoundment or other resource management technique that would ensure that, if the application were granted, the effects of the diversion would not impair any senior water right, adopted instream flows, or closed water sources.

If no acceptable proposal for water impoundment or other resource management technique is submitted within three years, the DOE must issue an order denying an application. For good cause, including demonstrated diligence in working to identify a water impoundment or resource management technique, the DOE may, in response to a written request from an individual

applicant, extend the time to submit the amended application by no more than two additional years.

The DOE may also place pending applications from a particular water source into project-dependent status where a proposed water supply development project or projects could feasibly make water available for dormant applications. The DOE may make such a determination: (1) on its own volition; (2) upon receipt of a written request or recommendation from a watershed planning unit; or (3) upon receipt of a resolution of a county legislative authority with jurisdiction over the area in which the water source is located. Pending applications in project-dependent status terminate automatically after 10 years unless extended by the DOE for good cause. In no case may the DOE extend project-dependent status for any dormant application for more than 20 years from the date that application was initially placed into project-dependent status.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.