
**Agriculture & Natural Resources
Committee**

HB 2591

Brief Description: Recovering the actual cost of processing applications for water right permits.

Sponsors: Representatives Morris and Chase.

Brief Summary of Bill

- Creates a Water Rights Processing and Dam Safety Account for the processing of water right applications and change applications and the safety inspection of hydraulic works and plans and specifications.
- Adjusts fees relating to the processing of water right applications and change applications.
- Creates a permit exempt well registry with a registration fee.
- Requires the Department of Ecology to adjust the water right application fees on a periodic basis to reflect the direct administrative costs incurred in the processing of water right applications and change applications and the safety inspection of hydraulic works and plans and specifications.
- Requires the Department of Ecology to report biennially to the Legislature until December 31, 2019.

Hearing Date: 1/15/10

Staff: Jaclyn Ford (786-7339).

Background:

Under the state Water Code, a person must have a water right for any use of surface water and for all but certain exempted withdrawals of groundwater. A water right is a legal right to use a specified amount of water for a beneficial purpose. The Water Rights Program in Washington is managed by the Department of Ecology (DOE).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The process of acquiring a water right involves a number of steps and the payment of several fees. Fees for applications to appropriate or store water are assessed at the rate of \$1 per one hundredth cubic foot per second (cfs) and \$2 per acre foot of storage. The minimum fees for applications to appropriate or store water are \$50, and the maximum fee for these types of applications is \$25,000.

Fees for applications to transfer, change, or amend a water right certificate, permit, or claim are assessed at the rate of 50 cents per one hundredth cfs of water involved in the change, transfer, or amendment. Fees for applications to change a storage water right are assessed at the rate of \$1 for each acre foot of water involved in the change. The minimum fee for these types of applications is \$50, and the maximum fee is \$12,500. The fee for a temporary or seasonal change is \$50.

Fees for applications to extend time for beginning construction work or for completing application of water to beneficial use is \$50. This \$50 fee also applies to extensions of time requested under a change or transfer authorization. Fees for recording assignments, preparing and issuing water rights certificates, amending a water right claim, and filing formal protests against granting an application are \$50. No fee is required to comment on a water right application.

No fee is required for:

- changes related to donation of a trust water right to the state;
- changes associated with the DOE's acquisition of a trust water right for instream flows or other public purposes;
- changes for which applications are filed with a Water Conservancy Board or the DOE's review of a Water Conservancy Board's record of decision;
- acquisition, storage, or change actions associated with parties to a cost reimbursement agreement;
- emergency withdrawal authorizations or temporary drought-related water right changes received while a drought condition order is in effect; and
- hydraulic works that are less than 10 years old, that the DOE examined and approved the construction plans and specifications as to its safety. However, for any hydraulic works more than 10 years old, but less than 20 years old, that the DOE approved for safety, the fee charged must not exceed the fee for a significant hazard dam.

Only one examination fee and one certificate fee are imposed on change, transfer, or amendment applications involving a single project operating under more than water right or involving the consolidation of multiple water rights.

An application or request for action related to a water right is deemed incomplete unless at least the minimum specified fee is submitted with the application. The DOE must return any application or request that does not include at least the minimum specified fee. The minimum fee is considered a credit to the total fee due, and the DOE must provide notice to the applicant within five working days regarding any additional fees that must be submitted.

Eighty percent of the fees collected are deposited in the state General Fund. The remaining 20 percent are deposited in the Water Rights Tracking System Account (Tracking System Account). Fees from the Tracking System Account may be spent only after appropriation and may be used

by the DOE for the development, implementation, and management of a water rights tracking system, including a mapping system and a data base.

Summary of Bill:

The Water Rights Processing and Dam Safety Account

The Water Rights Processing and Dam Safety Account (Water Rights Account) is created in the State Treasury. Money in the Water Rights Account may be spent only after appropriation. Expenditures from the Water Rights Account may be used only to support the processing of water right applications and change applications and the safety inspection of hydraulic works and plans and specifications for those works.

Water Right Applications

Each person who holds a water right permit application, a reservoir permit application, or a change, transfer, or amendment application that is pending at any time between the effective date of this Act and June 30, 2011, must remit a one-time fee of \$200 to retain an application in good standing. The DOE must provide written notice by certified mail to each holder of an application that a fee is due in order for the applicant to maintain in good standing. The notice must require that the fees be paid within 90 days of the date of receipt, but in no case may payment be due later than June 30, 2011. For ease of administration, the DOE may distribute the issuance of the notices by geographic area. The good standing fee is a credit against the total required application fees.

Applications that are not in good standing must be canceled. The DOE must issue an order to any holder of an application who fails to pay the fee within the prescribed time. The order must state that the application is canceled unless payment is received within 30 days.

An applicant for a permit to appropriate water must submit a minimum fee of \$500 with their application. For an amount of water exceeding one-half cfs, the examination fee must be assessed at the rate of \$10 per one hundredth cfs. The examination fee may not be less than \$500 or more than \$25,000 unless the application is part of a cost-reimbursement agreement. The fee required by a party to a cost-reimbursement agreement is one-fifth the required amount for an application for a permit to appropriate water, but no less than \$250 and no more than \$5,000.

An applicant to store water must submit a fee of \$20 for each acre foot of storage proposed, with a minimum fee of \$500. The examination fee for a storage project may not be less than \$500 or more than \$25,000 unless the application is part of a cost-reimbursement agreement. The fee required for a reservoir application filed by a party to a cost-reimbursement agreement is one-fifth the amounts required for an application to store water, but no less than \$250 and no more than \$5,000.

An applicant to transfer, change, or amend a water right certificate, permit, or claim, must submit, with the application, a minimum fee of \$500 for each type of change requested. For an application for change involving an amount of water exceeding one cfs, the total examination fee must be assessed at the rate of \$5 per one hundredth cfs for each type of change requested. For an application for change of a storage water right, the total examination fee must be assessed at the rate of \$5 for each acre foot of water involved in the change. The fee must be based on the amount of water subject to change as proposed in the application, not on the total amount of

water reflected in the water right certificate, permit, or claim. The examination fee charged for a change application may not be less than \$500 or more than \$12,500.

The fee paid to the DOE for an application for change filed with a Water Conservancy Board, or for an application for change filed by a party to a cost-reimbursement agreement must be one-fifth of the amounts required for an application to transfer, change, or amend a water right, but may not be less than \$100 or more than \$3,000. A Water Conservancy Board may charge its own processing fees.

The examination fee for a temporary or seasonal change is \$200 and must be submitted with the application.

All fees paid to the DOE will be a credit toward the total amount due whenever the examination fee totals more than \$50.

The fee for filing an emergency withdrawal authorization or temporary drought-related water right change, that is received by the DOE while a drought condition order is in effect, is \$100.

A fee of \$250 is required when applying for an extension of time for beginning construction work under a permit to appropriate water, for completion of construction work, or for completing application of water to a beneficial use. These fees also apply to similar extensions of time requested under a change or transfer authorization.

A minimum fee of \$500, or a fee equal to the actual cost, is required for the examination of safety plans and specifications as to safety of controlling works for storage of 10 acre feet or more of water.

A fee of \$200 is required for recording an assignment of either a permit to appropriate water or an application for such a permit.

A fee of \$200 is required for preparing and issuing all water right certificates.

A fee of \$50 is required for filing and recording a formal protest against granting any application. No fee is required to submit a comment, by mail or otherwise, regarding an application.

A fee of \$200 is required for filing an application to amend a water right claim.

Permit Exempt Wells

The owner of a permit exempt well must register the withdrawal with the DOE on a registration form provided by the DOE. The registration must include information regarding the ownership and intended purpose of the withdrawal, the amounts withdrawn or proposed to be withdrawn, and the location, size, depth, and other particulars regarding the well. The DOE must make the registration form available on its internet site and must accept the filing of registration forms electronically as well as by conventional mail or personal delivery.

For each claimed permit exempt well, where the beneficial use of the water was commenced prior to January 1, 2010, the registration form must be accompanied by a fee of \$50. For each

permit exempt withdrawal, where the beneficial use of the water is commenced on or after January 1, 2010, the registration form must be accompanied by a fee of \$300. Upon receiving a completed registration form and fee, the DOE must make a record of the registration form and must return a copy of the registration to the owner of the permit exempt well as having been received and registered.

If the well or wells being registered have not previously been tagged, the DOE must provide an identification tag for each well and must instruct the owner to affix the tags to the wells used to withdraw water.

Whenever the owner of a permit exempt well adds dwelling units or additional purposes for the use of the withdrawal or otherwise increases the amount of water to be withdrawn by more than 20 percent, a new registration form and fee of \$100 must be filed. For administrative efficiency, the DOE may phase in on a county by county basis the requirement to register permit exempt wells in use prior to January 1, 2010.

All fees collected from permit exempt wells must be deposited into the Water Rights Account.

The DOE may issue either an order or a civil penalty, or both, to the owner of a permit exempt well who fails to file the registration form and fee. Before issuing an order or penalty, the DOE must inform the owner in writing by registered mail with return receipt that the registration form and fee must be remitted within 30 days. An order may require the owner to cease withdrawing and using water until the form and fee have been filed. If the owner continues to refuse to file the form and fee, the DOE may issue an order requiring that the well or wells be decommissioned.

A permit exempt well that has not been registered cannot be recognized as a water right under a general adjudication of water rights.

Adjustment of Fees

The DOE must adjust the water right application fees on a periodic basis to reflect the direct administrative costs incurred in the processing of water right applications and change applications and the safety inspection of hydraulic works and plans and specifications.

Reports to the Legislature

The DOE must submit a report to the Legislature prior to December 31, 2011, and biennially thereafter until December 31, 2019, on the status of the backlog of applications for water right permits, the effectiveness of processing water right permit applications to a conclusion within 12 months, and the appropriateness of the fee amounts.

Appropriation: None.

Fiscal Note: Requested on 1/8/10.

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