

HOUSE BILL REPORT

HB 2591

As Reported by House Committee On:
Agriculture & Natural Resources
Ways & Means

Title: An act relating to the cost of processing applications for water right permits.

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

Sponsors: Representatives Morris and Chase.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/15/10, 1/22/10 [DPS];

Ways & Means: 2/3/10, 2/8/10 [DP2S(w/o sub AGNR)].

Brief Summary of Second Substitute 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 Washington State Department of Ecology (DOE) 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 DOE to report biennially to the Legislature until December 31, 2020.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Blake, Chair; Ormsby, Vice Chair; Jacks, Liias, McCoy, Nelson, Rolfes and Van De Wege.

Minority Report: Do not pass. Signed by 5 members: Representatives Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Kretz, Pearson and Warnick.

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).

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 0.01 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 0.01 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 Substitute 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 60 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 change, transfer, or amend an existing water right must pay the following fee, depending on the amount of water in the application:

- A fee of \$2,000 for up to 0.02 cfs of water.
- A fee of \$3,000 for between .02 and .1 cfs of water.

- A fee of \$4,500 for between .1 and .5 cfs of water.
- A fee of \$10,000 for between .5 and 1 cfs of water.
- A fee of \$15,000 for between 1 and 10 cfs of water.
- A fee of \$25,000 for above 10 cfs of water.

An applicant for a permit to store water, and to change a storage right must pay the following fee, depending on the amount of water in the application:

- A fee of \$1,000 for less than one 100 acre feet of water.
- A fee of \$2,000 for between 100 acre feet of water and 1,000 acre feet of water.
- A fee of \$7,500 for between 1,000 acre feet of water and 10,000 acre feet of water.
- A fee of \$15,000 for more than 10,000 acre feet of water.

Fees already paid to the DOE by pending applicants will be credited toward the total amount due.

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 or storage right. 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.

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 based on the actual cost of the inspection, including the expense incident, is required for the inspection of hydraulic works.

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.

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 may periodically adjust the application fees 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. Before proposing to adopt any changes to the fees, the DOE must consult with the policy committees of the Legislature that review water resources legislation.

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.

Substitute Bill Compared to Original Bill:

The substitute bill:

- requires the DOE to consult with the policy committees of the Legislature that review water resources legislation before proposing to adopt any changes to the fees; and
 - increases certain fees in order to ensure that the backlog is eliminated in four years and the DOE is recovering the actual cost of processing applications.
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Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) By eliminating the backlog, jobs will be created and the Washington economy will grow. The state subsidizes 98 percent of the cost of the applications. The backlog is a huge problem. People use exempt wells because they don't want to wait in a long backlog line. This bill will help in water management. The people who benefit from receiving a water right are the people who get the water right. This bill is the right direction for the state. The application fees need to be paid by the users, not the tax payers. Eliminating the backlog is a good idea. The bill should be strengthened to include funding for establishing instream flows and water management tools. There should be a long-term funding source. Registering wells is an excellent addition to the DOE's ability to manage water. Funding has been a rollercoaster over the years. The program is currently subsidized by general fund tax dollars.

(With concerns) There are more issues in the DOE than just staffing. Permit-exempt wells should not have to ever be registered.

(Opposed) The amount of money the DOE receives does not reflect how quickly the backlog is reduced. There should be additional timelines and accountability.

Persons Testifying: (In support) Representative Morris, prime sponsor; Dawn Vyvyan, Yakama Nation Puyallup Tribe; Matt Zuvich, Washington Federation of State Employees; and Ken Slattery, Department of Ecology.

(With concerns) Darcy Nonemacher, American Rivers.

(Opposed) Kathleen Collins, Washington Water Policy Alliance; John Stuhlmiller, Washington Farm Bureau; and Jack Field, Washington Cattlemen's Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Natural Resources. Signed by 12 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Cody, Conway, Darneille, Hunt, Hunter, Kagi, Kenney, Pettigrew and Seaquist.

Minority Report: Do not pass. Signed by 10 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Haigh, Hinkle, Kessler, Priest, Ross and Schmick.

Staff: Owen Rowe (786-7391).

Summary of Recommendation of Committee On Ways & Means Compared to Recommendation of Committee On Agriculture & Natural Resources:

The second substitute bill establishes fees for applications for a water right, a change, transfer, and amendment of a water right on a linear scale (\$100 for each one-hundredth of a cubic foot per second requested). The new fees begin on the effective date of the act. The elimination of the backlog is extended to five years. The Department of Ecology (DOE) is required to proportionately reduce the fees associated with an application when information has been previously obtained that directly relates to the processing of that application. The DOE must, within existing appropriations, provide grant funds to assist applicants in the payment of fees. The DOE is required to give priority in the distribution of grant money to applicants who designate on their application that the water will be used for agricultural purposes. Only new permit-exempt wells are required to register and pay a fee. All previously constructed wells do not have to register or pay a fee. The report to the Legislature is shifted forward one year to 2012. Every even numbered year until 2020, the DOE will report to the Legislature.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Constituents are concerned about the water rights processing backlog in the DOE. The backlog is hurting commerce in the state. Those most impacted are light industrial and industrial firms. It is shocking to find out that water rights processing is 98 percent subsidized by the General Fund, which is why there may not be enough funding to address the backlog. Fees in this bill may be too high so a substitute bill is being drafted to address those issues. This bill attempts to clear the backlog and gives people an opportunity to stay in good standing by paying a new fee.

(In support with concerns) This bill does not go far enough. Not only should the General Fund subsidization of this program end, but maintaining a water right should be entirely paid by the applicant. An annual water right management fee on all users is the only way to end General Fund subsidization of this program.

(Neutral) The DOE cannot take a position on this bill because it is not in the Governor's budget proposal. Some areas in the state are definitely fully allocated and denials in these areas are likely to be forthcoming without complicated and time consuming mitigation. Many water rights decisions are also appealed which creates an impact on staff time to process the backlog. State taxpayers provide the lion's share of the funding for this program. Budget reductions from last session may cause the backlog to continue to grow.

(Opposed) Water is critical to economic development and job creation. The current water rights processing backlog is over 7,000 applications. This backlog has been fairly constant over the past several years, even during good economic times. There is concern that the \$20 million increase in funding to the DOE will not decrease the application backlog. There are questions about whether the fee increases in this bill are fair, and whether there is a nexus between the fees and the service provided by the DOE. The fee increases in this bill related to exempt wells is not a fee for service; there is no service. Even a fee increase of \$300 for exempt wells makes a difference for home builders in this economy.

Persons Testifying: (In support) Representative Morris, prime sponsor.

(In support with concerns) Matt Zuvich, Washington Federation of State Employees.

(Neutral) Ken Slattery and Jim Skalski, Washington State Department of Ecology.

(Opposed) Bob Johnson, Lewis County; and Julie Nichols, Building Industry Association of Washington.

Persons Signed In To Testify But Not Testifying: None.