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**Agriculture & Natural Resources  
Committee**

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**E2SSB 6267**

**Brief Description:** Regarding water right processing improvements.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Rockefeller and Honeyford; by request of Department of Ecology).

**Brief Summary of Engrossed Second Substitute Bill**

- Authorizes an alternative cost-reimbursement process for water right applications.
- Authorizes an expedited processing procedure for water right applications.
- Establishes criteria for qualifying as a certified water right examiner.
- Creates a Water Rights Processing Account to support the processing of water right applications and for the examination, certification, and renewal of certification of water right examiners.

**Hearing Date:** 2/18/10

**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

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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 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.

The requirement to pay for the cost of all other senior applications from the same source of supply does not apply if the application would not diminish the water available to earlier pending applicants from the same source of supply. A water source may include surface water only, ground water only, or surface and ground water together if the DOE finds they are hydraulically connected. When determining the boundaries of a water source, the DOE must also consider technical information submitted by the applicant.

Upon the request of an applicant seeking cost-reimbursement processing, the DOE may elect to initiate a coordinated cost-reimbursement process. If the DOE initiates a coordinated cost-reimbursement project, they must notify in writing all persons who have pending applications by way of mail and by publication in a newspaper. The notification must inform those applicants that a coordinated cost-reimbursement process is being initiated, and the criteria under which the applications will be examined and determined. The notice must also provide the estimated cost for having an application processed and how long the cost-reimbursement process will take before an application is approved or denied. The notice must provide at least 60 days for the applicants to respond in writing as to their interest in participating in the cost-reimbursement processing of their applications. The applicant must pay for the initial phase of cost-reimbursement. The cost for each applicant must be based on the proportionate quantity of water requested by the applicant.

If an applicant elects not to participate in a cost-reimbursement process, the application remains on file with the DOE, retains its priority date, and may be processed in the future under regular processing, expedited processing, or through cost-reimbursement.

The DOE must process remaining applications on file within the framework of other water right processing needs, as determined by agency rule and to the extent resources are available. Coordinated cost-reimbursement applies only to the sequence of application processing and does not affect the relative priority date of any resulting water rights.

#### Cost-Reimbursement Consultants.

For any cost-reimbursement process, the applicant may select the consultant from the DOE's prequalified consultant's list or may be assigned a prequalified consultant by the DOE. The applicant may also use his or her own consultant at the discretion of the DOE if the consultant meets certain requirements.

If the applicant proposes to use his or her own consultant for one or more of the work products or reports associated with the work generally performed under a cost-reimbursement agreement, all investigations, work products, technical reports and analysis, findings, and documentation undertaken by the consultant relating to the application, including preparation of a draft report of examination, is subject to the review, comment, modification, refusal, or approval of the DOE before being used in the DOE's decision-making process. At any point during the cost-reimbursement process, the DOE may request or accept technical information, data, and analysis from the applicant or the applicant's consultant to support the cost-reimbursement process or the DOE's decision on the application.

The DOE may adopt rules or guidance providing: (1) Minimum qualifications and standards for the submission of technical information by consultants; and (2) technical information, scientific analysis, work product documentation, and report presentation standards that an applicant's consultant must meet.

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. Within two weeks of the DOE receiving the draft reports of examination, an applicant may provide comments to the DOE on the contents of the report. 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.

#### Appeals.

Each individual applicant is responsible for his or her own appeal costs that may result from a water right decision made by the DOE. In the event that an applicant's water right approval is appealed by a third party, the applicant for the water right in question must reimburse the DOE for the cost of defending the decision before the PCHB unless otherwise agreed to by the applicant and the DOE. If an applicant appeals either an approval or denial by the DOE, the applicant is responsible for his or her own appeal costs.

#### Water Rights Processing Account.

The Water Rights Processing Account (Account) is created in the State Treasury. Money in the Account may be spent only after appropriation. Expenditures from the Account may only be used to support the processing of water right applications for a new appropriation, change, transfer, or amendment of a water right or for the examination, certification, and renewal of certification of water right examiners.

#### Expedited Processing.

The DOE may expedite processing of applications within the same surface water or groundwater source on its own volition when there is interest from a sufficient number of applicants or upon receipt of written requests from at least 10 percent of the applicants within a water source. If those conditions are met and the DOE determines it is in the public interest to expedite applications in a water source, the DOE must notify everyone with a pending application that expedited processing is being initiated, provide the criteria under which the applications are

examined and determined, provide the estimated cost, provide an estimate of how long the expedited process takes, and provide at least 60 days for applicants to respond to the DOE.

The DOE must determine the full costs to process applications on an expedited basis and recover those costs from applicants who elect to participate through expedited processing fees. The DOE must calculate the estimated cost to the applicant based primarily on the quantity of water requested by the applicant and may adjust the fee if it appears that the application requires more time due to its complexity. Any application fees that were paid by the applicant must be credited against the applicant's expedited processing fee. The DOE must collect the expedited processing fee prior to the expedited processing of an application. A participating applicant must transmit the processing fee within 60 days of the DOE's notification. The expedited processing fees must be deposited into the Account.

If an applicant elects not to participate in expedited processing, the application remains on file with the DOE, retains its priority date, and may be processed in the future under regular processing, expedited processing, or through cost-reimbursement. Such an application may not be processed through expedited processing within 12 months after the previous expedited processing has been completed unless the applicant pays the full proportionate share that would otherwise have been paid for expedited processing. Any proceeds collected from an applicant may be used to reimburse the other applicants who participated in the previous expedited processing.

#### Certified Water Right Examiners.

The DOE must establish and maintain a list of certified water right examiners. Certified water right examiners are eligible to perform final proof examinations of permitted water uses leading to the issuance of a water right certificate. An individual must be registered in Washington as a professional engineer, professional land surveyor, or registered hydrogeologist, or demonstrate at least five years of applicable experience, or be a Water Conservancy Board member in order to be eligible to become a certified water right examiner. 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 complete eight hours annually of qualifying continuing education in the water resources field and be bonded for at least \$50,000.

In order to receive a final water right certificate, the permit holder must hire a certified water right examiner to perform a final examination of the project to verify its completion and to determine and document for the permit holder and the DOE: (1) the amount of water that has been appropriated for beneficial use; (2) the location of diversion or withdrawal and conveyance facilities; and (3) 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. The DOE must make its final decision within 60 days of the date of receipt of the proof examination from the certified water right examiner, unless otherwise requested by the applicant.

Notification to Affected Tribal Governments.

DOE must provide electronic notice and opportunity for comment to affected federally recognized tribal governments concurrently when providing notice to applicants under cost-reimbursement or expedited processing of applications.

Groundwater Right Amendments.

A holder of a valid right to withdraw public groundwater may, without losing the holder's priority of right, construct wells or other means of withdrawal at a new location in substitution for or in addition to those at the original location, or the holder may change the manner or the place of use of the water. The location of the original well or wells of a water right permit or certificate is the area described as the point of withdrawal in the original public notice published for the application for the water right for the well. The location of the original well or wells of a water right claim is the area located within a one-quarter mile radius of the current well or wells.

Report to the Legislature.

The DOE must review current water resource functions and report to the Legislature and the Governor by September 1, 2010, on improvements to make the Water Resources Program more self-sustaining and efficient.

**Appropriation:** None.

**Fiscal Note:** Available. Requested on engrossed second substitute on February 17, 2010.

**Effective Date:** The bill contains multiple effective dates.