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SECOND SUBSTITUTE HOUSE BILL 2591

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State of Washington

61st Legislature

2010 Regular Session

By House Ways & Means (originally sponsored by Representatives Morris and Chase)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to the cost of processing applications for water  
2 right permits; amending RCW 90.03.470 and 90.44.050; adding new  
3 sections to chapter 90.03 RCW; creating a new section; prescribing  
4 penalties; and providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
7 recover the actual cost of processing applications for water right  
8 permits and to stop subsidizing the processing of water right permits  
9 out of general tax revenues. The legislature recognizes that the  
10 largest beneficiary of receiving a water permit is the person receiving  
11 the water permit.

12 It is further the intent of the legislature that the backlog of  
13 applications be eliminated within five years of the effective date of  
14 this section and that thereafter water right permit applications be  
15 processed to a conclusion within twelve months of an application being  
16 made to the department of ecology.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03 RCW  
18 to read as follows:

1 The water rights processing and dam safety account is created in  
2 the state treasury. All receipts from the fees collected under RCW  
3 90.03.470 must be deposited into the account. Moneys in the account  
4 may be spent only after appropriation. Expenditures from the account  
5 may be used only to support the processing of water right applications  
6 and change applications as provided in this chapter and chapters 90.38,  
7 90.42, and 90.44 RCW and the safety inspection of hydraulic works and  
8 plans and specifications for such works.

9 **Sec. 3.** RCW 90.03.470 and 2005 c 412 s 2 are each amended to read  
10 as follows:

11 The fees specified in this section shall be collected by the  
12 department in advance of the requested action.

13 ~~(1) ((For the examination of an application for a permit to~~  
14 ~~appropriate water, a minimum fee of fifty dollars must be remitted with~~  
15 ~~the application.~~

16 ~~For an amount of water exceeding one half cubic foot per second,~~  
17 ~~the examination fee shall be assessed at the rate of one dollar per one~~  
18 ~~hundredth cubic foot per second. In no case will the examination fee~~  
19 ~~be less than fifty dollars or more than twenty five thousand dollars.~~  
20 ~~No fee is required under this subsection (1) for an application filed~~  
21 ~~by a party to a cost reimbursement agreement made under RCW~~  
22 ~~90.03.265.)) For the examination of an application for a permit to~~  
23 ~~appropriate water or for an application to change, transfer, or amend~~  
24 ~~an existing water right, an examination fee equal to one hundred~~  
25 ~~dollars for each one-hundredth of a cubic foot per second must be~~  
26 ~~remitted with the application, but in no case may the examination fee~~  
27 ~~be less than one thousand dollars or more than fifty thousand dollars.~~

28 ~~(2) The following fees apply for the examination of an application~~  
29 ~~to store water(~~(, a fee of two dollars for each acre foot of storage~~~~  
30 ~~proposed shall be charged, but a minimum fee of fifty dollars must be~~  
31 ~~remitted with the application. In no case will the examination fee for~~  
32 ~~a storage project be less than fifty dollars or more than twenty five~~  
33 ~~thousand dollars. No fee is required under this subsection (2) for an~~  
34 ~~application filed by a party to a cost reimbursement agreement made~~  
35 ~~under RCW 90.03.265)) and for an application to change a storage right:~~

36 ~~(a) For storage of less than one hundred acre feet of water, an~~

1 examination fee of one thousand dollars must be remitted with the  
2 application.

3 (b) For storage of more than one hundred acre feet of water but  
4 less than or equal to one thousand acre feet of water, an examination  
5 fee of two thousand dollars must be remitted with the application.

6 (c) For storage of more than one thousand acre feet of water but  
7 less than or equal to ten thousand acre feet of water, an examination  
8 fee of seven thousand five hundred dollars must be remitted with the  
9 application.

10 (d) For storage of more than ten thousand acre feet of water, an  
11 examination fee of fifteen thousand dollars must be remitted with the  
12 application.

13 ~~(3)(a) ((For the examination of an application to transfer, change,~~  
14 ~~or amend a water right certificate, permit, or claim as authorized by~~  
15 ~~RCW 90.44.100, 90.44.105, or 90.03.380, a minimum fee of fifty dollars~~  
16 ~~must be remitted with the application. For an application for change~~  
17 ~~involving an amount of water exceeding one cubic foot per second, the~~  
18 ~~total examination fee shall be assessed at the rate of fifty cents per~~  
19 ~~one hundredth cubic foot per second. For an application for change of~~  
20 ~~a storage water right, the total examination fee shall be assessed at~~  
21 ~~the rate of one dollar for each acre foot of water involved in the~~  
22 ~~change. The fee shall be based on the amount of water subject to~~  
23 ~~change as proposed in the application, not on the total amount of water~~  
24 ~~reflected in the water right certificate, permit, or claim. In no case~~  
25 ~~will the examination fee charged for a change application be less than~~  
26 ~~fifty dollars or more than twelve thousand five hundred dollars.~~

27 (b)) The fee paid to the department for an application for change  
28 filed with a water conservancy board under chapter 90.80 RCW or for an  
29 application for change filed by a party to a cost-reimbursement  
30 agreement under RCW 90.03.265 must be one-fifth of the amounts provided  
31 in subsections (1) and (2) of this section. A conservancy board may  
32 charge its own processing fees in accordance with RCW 90.80.060.

33 (b) The examination fee for a temporary or seasonal change under  
34 RCW 90.03.390 is ((fifty)) two hundred dollars and must be remitted  
35 with the application.

36 (c) No fee is required under this subsection (3) for:

37 (i) An application to process a change relating to donation of a  
38 trust water right to the state; or

1 (ii) An application to process a change when the department  
2 otherwise acquires a trust water right for purposes of improving  
3 instream flows or for other public purposes((+

4 ~~(iii) An application filed with a water conservancy board according  
5 to chapter 90.80 RCW or for the review of a water conservancy board's  
6 record of decision submitted to the department according to chapter  
7 90.80 RCW; or~~

8 ~~(iv) An application filed by a party to a cost reimbursement  
9 agreement made under RCW 90.03.265)).~~

10 (d) For a change, transfer, or amendment involving a single project  
11 operating under more than one water right, including related secondary  
12 diversion rights, or involving the consolidation of multiple water  
13 rights, only one examination fee and one certificate fee are required  
14 to be paid.

15 ~~(4) ((The fifty-dollar minimum fee payable with the application  
16 shall be a credit to the total amount whenever the examination fee  
17 totals more than fifty dollars under the schedule specified in  
18 subsections (1) through (3) of this section and in such case the  
19 further fee due shall be the total computed amount, less the amount  
20 previously paid. Within five working days from receipt of an  
21 application, the department shall notify the applicant by registered  
22 mail of any additional fees due under subsections (1) through (3) of  
23 this section.))~~ (a) The fee amounts specified in this section apply to  
24 applications received after the effective date of this section and to  
25 all applications that have not been acted on by the department by  
26 issuance of a report of examination as of the effective date of this  
27 section. For pending applications that were filed prior to the  
28 effective date of this section, any fees that were paid under a  
29 previous fee schedule must be credited to the amounts required by  
30 subsections (1), (2), and (3) of this section. When the department is  
31 prepared to take action on an application that was filed prior to the  
32 effective date of this section, the department shall notify the  
33 applicant that additional fees are due and give the applicant sixty  
34 days to remit the additional fees. If the applicant fails to remit the  
35 additional fees within the time provided, the department shall cancel  
36 the application and inform the applicant of the cancellation.

37 (b) If the department receives a water right, change, transfer,  
38 amendment, or storage application that does not include remittance of

1 the fee amounts required by this section, the department shall return  
2 the application to the applicant with instructions on the proper fee  
3 amount to be remitted. An application does not establish a priority  
4 date until the proper fee is remitted.

5 (5) The ~~((fees specified in subsections (1) through (3) of this~~  
6 ~~section do not apply to any filings))~~ fee for filing an emergency  
7 withdrawal authorization~~((s))~~ or temporary drought-related water right  
8 change~~((s))~~ authorized under RCW 43.83B.410 that ~~((are))~~ is received by  
9 the department while a drought condition order issued under RCW  
10 43.83B.405 is in effect is one hundred dollars.

11 (6) For applying for each extension of time for beginning  
12 construction work under a permit to appropriate water, for completion  
13 of construction work, or for completing application of water to a  
14 beneficial use, a fee of two hundred fifty dollars is required. These  
15 fees also apply to similar extensions of time requested under a change  
16 or transfer authorization.

17 (7) For the inspection of any hydraulic works to ~~((insure))~~ ensure  
18 safety to life and property, a fee based on the actual cost of the  
19 inspection, including the expense incident thereto, is required  
20 ~~((except as follows: (a) For any hydraulic works less than ten years~~  
21 ~~old, that the department examined and approved the construction plans~~  
22 ~~and specifications as to its safety when required under RCW 90.03.350,~~  
23 ~~there shall be no fee charged; or (b) for any hydraulic works more than~~  
24 ~~ten years old, but less than twenty years old, that the department~~  
25 ~~examined and approved the construction plans and specifications as to~~  
26 ~~its safety when required under RCW 90.03.350, the fee charged shall not~~  
27 ~~exceed the fee for a significant hazard dam)).~~

28 (8) For the examination of plans and specifications as to safety of  
29 controlling works for storage of ten acre feet or more of water, a  
30 minimum fee of ~~((ten))~~ five hundred dollars, or a fee equal to the  
31 actual cost, is required.

32 (9) For recording an assignment either of a permit to appropriate  
33 water or of an application for such a permit, a fee of ~~((fifty))~~ two  
34 hundred dollars is required.

35 (10) For preparing and issuing all water right certificates, a fee  
36 of ~~((fifty))~~ two hundred dollars is required.

37 (11) For filing and recording a formal protest against granting any

1 application, a fee of fifty dollars is required. No fee is required to  
2 submit a comment, by mail or otherwise, regarding an application.

3 (12) For filing an application to amend a water right claim filed  
4 under chapter 90.14 RCW, a fee of (~~fifty~~) two hundred dollars is  
5 required.

6 (13) For the registration of a new permit exempt groundwater  
7 withdrawal as required by RCW 90.44.050, a fee of three hundred dollars  
8 must be remitted.

9 (14)(a) Each person who holds a water right permit application, a  
10 reservoir permit application, or a change, transfer, or amendment  
11 application that is pending at any time between the effective date of  
12 this section and June 30, 2011, must remit a one-time fee of two  
13 hundred dollars to the department to retain an application in good  
14 standing. The department shall provide written notice by certified  
15 mail to each holder of an application for the fees that are due under  
16 this section. The notice must require that the fees be paid within  
17 sixty days of the date of receipt, but in no case may payment be due  
18 later than June 30, 2011. For ease of administration, the department  
19 may distribute the issuance of the notices by geographic area. The  
20 surcharge paid under this subsection is a credit against the  
21 application fees required in this section.

22 (b) Applications not in good standing must be canceled. The  
23 department shall issue an order to any holder of an application who  
24 fails to pay the fee within the prescribed time. The order must state  
25 that the application is canceled unless payment is received within  
26 thirty days.

27 (c) The department shall advise an applicant and provide an  
28 opportunity for an applicant to withdraw their application without  
29 further payment of fees if the department determines that the  
30 application would not likely be approved. The department shall  
31 summarize the basis for its conclusion to the applicant. The  
32 department shall further advise that the applicant has the option of  
33 providing an amended application that could include storage or other  
34 resource management technique that might make it approvable under RCW  
35 90.03.255 or 90.44.055. The department's advice is not subject to  
36 appeal. If the applicant decides to retain the application on file and  
37 pays the fee required in this subsection, the department shall maintain  
38 the application in good standing until it is able to render a final

1 decision on the application. The final decision is subject to appeal  
2 to the pollution control hearings board as provided under chapter  
3 43.21B RCW.

4 (15) An application or request for an action as provided for under  
5 this section is incomplete unless accompanied by the fee or the minimum  
6 fee. If no fee or an amount less than the minimum fee accompanies an  
7 application or other request for an action as provided under this  
8 section, the department shall return the application or request to the  
9 applicant with advice as to the fee that must be remitted with the  
10 application or request for it to be accepted for processing. If  
11 additional fees are due, the department shall provide timely  
12 notification by certified mail with return receipt requested to the  
13 applicant. No action may be taken by the department until the fee is  
14 paid in full. Failure to remit fees within sixty days of the  
15 department's notification is grounds for rejecting the application or  
16 request or canceling the permit. Cash shall not be accepted. Fees  
17 must be paid by check or money order and are nonrefundable.

18 ~~((+14))~~ (16) For purposes of calculating fees for groundwater  
19 filings, one cubic foot per second shall be regarded as equivalent to  
20 four hundred fifty gallons per minute.

21 ~~((+15) Eighty percent of the fees collected by the department under~~  
22 ~~this section shall be deposited in the state general fund. Twenty~~  
23 ~~percent of the fees collected by the department under this section~~  
24 ~~shall be deposited in the water rights tracking system account~~  
25 ~~established in RCW 90.14.240.~~

26 ~~(16) Except for the fees relating to the inspection of hydraulic~~  
27 ~~works and the examination of plans and specifications of controlling~~  
28 ~~works provided for in subsections (7) and (8) of this section, nothing~~  
29 ~~in this section is intended to grant authority to the department to~~  
30 ~~amend the fees in this section by adoption of rules or otherwise.))~~

31 (17) The fees collected by the department under this section must be  
32 deposited in the water rights processing and dam safety account created  
33 in section 2 of this act.

34 (18)(a) The fees specified in this section are effective until the  
35 department adopts rules that modify them in accordance with section 6  
36 of this act, except that the fees required in subsections (7) and (8)  
37 of this section may be modified at any time.

1        (b) When information has been previously obtained that directly  
2 relates to the processing of an application in subsections (1) and (2)  
3 of this section, the department must proportionately reduce the fees  
4 associated with that application as a result of the reduced workload of  
5 the department.

6        NEW SECTION.    **Sec. 4.** A new section is added to chapter 90.03 RCW  
7 to read as follows:

8        Within existing appropriations, the department must provide grant  
9 funds to assist applicants in the payment of fees required in RCW  
10 90.03.470. The department shall give priority in the distribution of  
11 grant money to applicants who designate on their application that the  
12 water will be used for agricultural purposes.

13        **Sec. 5.** RCW 90.44.050 and 2003 c 307 s 1 are each amended to read  
14 as follows:

15        (1) After June 6, 1945, no withdrawal of public groundwaters of the  
16 state shall be begun, nor shall any well or other works for such  
17 withdrawal be constructed, unless an application to appropriate such  
18 waters has been made to the department and a permit has been granted by  
19 it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public  
20 groundwaters for stock-watering purposes, or for the watering of a lawn  
21 or of a noncommercial garden not exceeding one-half acre in area, or  
22 for single or group domestic uses in an amount not exceeding five  
23 thousand gallons a day, or as provided in RCW 90.44.052, or for an  
24 industrial purpose in an amount not exceeding five thousand gallons a  
25 day, is and shall be exempt from the provisions of this section, but,  
26 to the extent that it is regularly used beneficially, shall be entitled  
27 to a right equal to that established by a permit issued under the  
28 provisions of this chapter: PROVIDED, HOWEVER, That the department  
29 from time to time may require the person or agency making any such  
30 small withdrawal to furnish information as to the means for and the  
31 quantity of that withdrawal: PROVIDED, FURTHER, That at the option of  
32 the party making withdrawals of groundwaters of the state not exceeding  
33 five thousand gallons per day, applications under this section or  
34 declarations under RCW 90.44.090 may be filed and permits and  
35 certificates obtained in the same manner and under the same



1 requirements as is in this chapter provided in the case of withdrawals  
2 in excess of five thousand gallons a day.

3 (2)(a) The owner of a permit exempt withdrawal established under  
4 this section, the beneficial use of which is commenced on or after the  
5 effective date of this section, must register the withdrawal with the  
6 department on a registration form provided by the department. The  
7 registration must include information regarding the ownership and  
8 intended purpose of the withdrawal, the amounts withdrawn or proposed  
9 to be withdrawn, and the location, size, depth, and other particulars  
10 regarding the well. The department shall make the registration form  
11 available on its internet site and shall accept the filing of  
12 registration forms electronically as well as by conventional mail or  
13 personal delivery.

14 (b) For each permit exempt withdrawal the beneficial use of which  
15 is commenced on or after the effective date of this section, the  
16 registration form must be accompanied by a fee of three hundred  
17 dollars. Upon receiving a completed registration form and fee, the  
18 department shall make a record of the registration form and shall  
19 return a copy of the registration marked as having been received and  
20 registered.

21 (c) The well or wells being registered must be tagged in accordance  
22 with RCW 18.104.040(6). The department shall provide an identification  
23 tag for each well and shall instruct the owner to affix the tags to the  
24 wells used to withdraw water.

25 (d) Whenever the owner of a permit exempt withdrawal adds dwelling  
26 units or additional purposes for the use of the withdrawal or otherwise  
27 increases the amount of water to be withdrawn by more than twenty  
28 percent, a new registration form and fee of one hundred dollars must be  
29 filed.

30 (e) All fees collected under this section must be deposited into  
31 the water rights processing and dam safety account created in section  
32 2 of this act.

33 (3) The department may issue either an order under RCW 43.27A.190  
34 or a civil penalty under RCW 90.03.600, or both, to the owner of a new  
35 permit exempt withdrawal who fails to file the registration form and  
36 fee required in subsection (2) of this section. Before issuing an  
37 order or penalty, the department shall inform the owner in writing by  
38 registered mail with return receipt that the registration form and fee

1 must be remitted within thirty days. An order issued under this  
2 subsection may require the owner to cease withdrawing and using water  
3 until the form and fee have been filed. If the owner continues to  
4 refuse to file the form and fee, the department may issue an order  
5 requiring that the subject well or wells be decommissioned.

6 (4) A permit exempt withdrawal, the beneficial use of which is  
7 commenced on or after the effective date of this section, that has not  
8 been registered shall not be recognized as a water right under a  
9 general adjudication of water rights held under chapter 90.03 RCW.

10 NEW SECTION. Sec. 6. A new section is added to chapter 90.03 RCW  
11 to read as follows:

12 To effectuate the purpose of fully recovering the direct  
13 administrative costs incurred by the state to process water right and  
14 storage applications under this chapter and RCW 90.44.050 and to  
15 inspect and approve hydraulic works under this chapter, the department  
16 may periodically adopt rules to adjust the fees established in RCW  
17 90.03.470. Any subsequent fees adopted by rule supersede those  
18 provided in RCW 90.03.470. Before proposing to adopt any changes to  
19 the fees, the department shall consult with the policy committees of  
20 the legislature that review water resources legislation.

21 NEW SECTION. Sec. 7. A new section is added to chapter 90.03 RCW  
22 to read as follows:

23 (1) The department shall submit a report to the legislature prior  
24 to December 31, 2012, and biennially thereafter until December 31,  
25 2020, on the status of the backlog of applications for water right  
26 permits, the effectiveness of processing water right permit  
27 applications to a conclusion within twelve months, and the  
28 appropriateness of the fee amounts.

29 (2) This section expires January 1, 2021.

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