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HOUSE BILL 2591

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State of Washington

61st Legislature

2010 Regular Session

By Representatives Morris and Chase

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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 four 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)(a) For the examination of an application for a permit to  
14 appropriate water, a minimum fee of ~~((fifty))~~ five hundred dollars must  
15 be remitted with the application. For an amount of water exceeding  
16 one-half cubic foot per second, the examination fee shall be assessed  
17 at the rate of ~~((one))~~ ten dollars per one hundredth cubic foot per  
18 second. ~~((In no case will))~~ Except as provided in (b) of this  
19 subsection, the examination fee may not be less than ((fifty)) five  
20 hundred dollars or more than twenty-five thousand dollars. ~~((No fee is~~  
21 ~~required under this subsection (1) for an))~~

22 (b) The fee required for a permit application filed by a party to  
23 a cost-reimbursement agreement made under RCW 90.03.265 is one-fifth  
24 the amounts provided in (a) of this subsection but no less than two  
25 hundred fifty dollars and no more than five thousand dollars.

26 (2)(a) For the examination of an application to store water, a fee  
27 of ~~((two))~~ twenty dollars for each acre foot of storage proposed shall  
28 be charged, but a minimum fee of ~~((fifty))~~ five hundred dollars must be  
29 remitted with the application. ~~((In no case will))~~ Except as provided  
30 in (b) of this subsection, the examination fee for a storage project  
31 may not be less than ((fifty)) five hundred dollars or more than  
32 twenty-five thousand dollars. ~~((No fee is required under this~~  
33 ~~subsection (2) for an))~~

34 (b) The fee required for a reservoir application filed by a party  
35 to a cost-reimbursement agreement made under RCW 90.03.265 is one-fifth  
36 the amounts provided in (a) of this subsection but no less than two  
37 hundred fifty dollars and no more than five thousand dollars.

1           (3)(a) For the examination of an application to transfer, change,  
2 or amend a water right certificate, permit, or claim as authorized by  
3 RCW 90.44.100, 90.44.105, or 90.03.380, a minimum fee of (~~(fifty)~~) five  
4 hundred dollars for each type of change requested must be remitted with  
5 the application. For an application for change involving an amount of  
6 water exceeding one cubic foot per second, the total examination fee  
7 shall be assessed at the rate of (~~(fifty cents)~~) five dollars per one  
8 hundredth cubic foot per second for each type of change requested. For  
9 an application for change of a storage water right, the total  
10 examination fee shall be assessed at the rate of (~~(one)~~) five dollars  
11 for each acre foot of water involved in the change. The fee shall be  
12 based on the amount of water subject to change as proposed in the  
13 application, not on the total amount of water reflected in the water  
14 right certificate, permit, or claim. In no case will the examination  
15 fee charged for a change application be less than (~~(fifty)~~) five  
16 hundred dollars or more than twelve thousand five hundred dollars.

17           (b) The fee paid to the department for an application for change  
18 filed with a water conservancy board under chapter 90.80 RCW or for an  
19 application for change filed by a party to a cost-reimbursement  
20 agreement under RCW 90.03.265 must be one-fifth of the amounts provided  
21 in (a) of this subsection but no less than one hundred dollars and no  
22 more than three thousand dollars. A conservancy board may charge its  
23 own processing fees in accordance with RCW 90.80.060.

24           (c) The examination fee for a temporary or seasonal change under  
25 RCW 90.03.390 is (~~(fifty)~~) two hundred dollars and must be remitted  
26 with the application.

27           (~~(e)~~) (d) No fee is required under this subsection (3) for:

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

30           (ii) An application to process a change when the department  
31 otherwise acquires a trust water right for purposes of improving  
32 instream flows or for other public purposes(~~(+~~

33           ~~(iii) An application filed with a water conservancy board according~~  
34 ~~to chapter 90.80 RCW or for the review of a water conservancy board's~~  
35 ~~record of decision submitted to the department according to chapter~~  
36 ~~90.80 RCW; or~~

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

1        ~~((d))~~ (e) For a change, transfer, or amendment involving a single  
2 project operating under more than one water right, including related  
3 secondary diversion rights, or involving the consolidation of multiple  
4 water rights, only one examination fee and one certificate fee are  
5 required to be paid.

6        (4) The ~~((fifty-dollar))~~ minimum fee payable with the application  
7 shall be a credit to the total amount whenever the examination fee  
8 totals more than fifty dollars under the schedule specified in  
9 subsections (1) through (3) of this section and in such case the  
10 further fee due shall be the total computed amount, less the amount  
11 previously paid. Within five working days from receipt of an  
12 application, the department shall notify the applicant by registered  
13 mail of any additional fees due under subsections (1) through (3) of  
14 this section.

15        (5) The ~~((fees specified in subsections (1) through (3) of this  
16 section do not apply to any filings))~~ fee for filing an emergency  
17 withdrawal authorization~~((s))~~ or temporary drought-related water right  
18 change~~((s))~~ authorized under RCW 43.83B.410 that ~~((are))~~ is received by  
19 the department while a drought condition order issued under RCW  
20 43.83B.405 is in effect is one hundred dollars.

21        (6) For applying for each extension of time for beginning  
22 construction work under a permit to appropriate water, for completion  
23 of construction work, or for completing application of water to a  
24 beneficial use, a fee of two hundred fifty dollars is required. These  
25 fees also apply to similar extensions of time requested under a change  
26 or transfer authorization.

27        (7) For the inspection of any hydraulic works to ~~((insure))~~ ensure  
28 safety to life and property, a fee based on the actual cost of the  
29 inspection, including the expense incident thereto, is required except  
30 as follows: (a) For any hydraulic works less than ten years old, that  
31 the department examined and approved the construction plans and  
32 specifications as to its safety when required under RCW 90.03.350,  
33 there shall be no fee charged; or (b) for any hydraulic works more than  
34 ten years old, but less than twenty years old, that the department  
35 examined and approved the construction plans and specifications as to  
36 its safety when required under RCW 90.03.350, the fee charged shall not  
37 exceed the fee for a significant hazard dam.

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

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

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

10 (11) For filing and recording a formal protest against granting any  
11 application, a fee of fifty dollars is required. No fee is required to  
12 submit a comment, by mail or otherwise, regarding an application.

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

16 (13) For the registration of each permit exempt groundwater  
17 withdrawal as required by RCW 90.44.050, a fee of three hundred dollars  
18 must be remitted.

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

32 (b) Applications not in good standing must be canceled. The  
33 department shall issue an order to any holder of an application who  
34 fails to pay the fee within the prescribed time. The order must state  
35 that the application is canceled unless payment is received within  
36 thirty days.

37 (15) An application or request for an action as provided for under  
38 this section is incomplete unless accompanied by the fee or the minimum

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

13 ~~((+14))~~ (16) For purposes of calculating fees for groundwater  
14 filings, one cubic foot per second shall be regarded as equivalent to  
15 four hundred fifty gallons per minute.

16 ~~((+15) Eighty percent of the fees collected by the department under  
17 this section shall be deposited in the state general fund. Twenty  
18 percent of the fees collected by the department under this section  
19 shall be deposited in the water rights tracking system account  
20 established in RCW 90.14.240.~~

21 ~~(+16))~~ (17) The fees collected by the department under this section  
22 must be deposited in the water rights processing and dam safety account  
23 created in section 2 of this act.

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

29 **Sec. 4.** RCW 90.44.050 and 2003 c 307 s 1 are each amended to read  
30 as follows:

31 (1) After June 6, 1945, no withdrawal of public groundwaters of the  
32 state shall be begun, nor shall any well or other works for such  
33 withdrawal be constructed, unless an application to appropriate such  
34 waters has been made to the department and a permit has been granted by  
35 it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public  
36 groundwaters for stock-watering purposes, or for the watering of a lawn  
37 or of a noncommercial garden not exceeding one-half acre in area, or

1 for single or group domestic uses in an amount not exceeding five  
2 thousand gallons a day, or as provided in RCW 90.44.052, or for an  
3 industrial purpose in an amount not exceeding five thousand gallons a  
4 day, is and shall be exempt from the provisions of this section, but,  
5 to the extent that it is regularly used beneficially, shall be entitled  
6 to a right equal to that established by a permit issued under the  
7 provisions of this chapter: PROVIDED, HOWEVER, That the department  
8 from time to time may require the person or agency making any such  
9 small withdrawal to furnish information as to the means for and the  
10 quantity of that withdrawal: PROVIDED, FURTHER, That at the option of  
11 the party making withdrawals of groundwaters of the state not exceeding  
12 five thousand gallons per day, applications under this section or  
13 declarations under RCW 90.44.090 may be filed and permits and  
14 certificates obtained in the same manner and under the same  
15 requirements as is in this chapter provided in the case of withdrawals  
16 in excess of five thousand gallons a day.

17 (2)(a) The owner of a permit exempt withdrawal established under  
18 this section must register the withdrawal with the department on a  
19 registration form provided by the department. The registration must  
20 include information regarding the ownership and intended purpose of the  
21 withdrawal, the amounts withdrawn or proposed to be withdrawn, and the  
22 location, size, depth, and other particulars regarding the well. The  
23 department shall make the registration form available on its internet  
24 site and shall accept the filing of registration forms electronically  
25 as well as by conventional mail or personal delivery.

26 (b) For each claimed permit exempt withdrawal the beneficial use of  
27 which was commenced prior to January 1, 2010, the registration form  
28 must be accompanied by a fee of fifty dollars. For each permit exempt  
29 withdrawal the beneficial use of which is commenced on or after January  
30 1, 2010, the registration form must be accompanied by a fee of three  
31 hundred dollars. Upon receiving a completed registration form and fee,  
32 the department shall make a record of the registration form and shall  
33 return a copy of the registration marked as having been received and  
34 registered.

35 (c) If the well or wells being registered have not previously been  
36 tagged in accordance with RCW 18.104.040(6), the department shall  
37 provide an identification tag for each well and shall instruct the  
38 owner to affix the tags to the wells used to withdraw water.

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

6 (e) For administrative efficiency, the department may phase in on  
7 a county by county basis the requirement to register permit exempt  
8 withdrawals in use prior to January 1, 2010.

9 (f) All fees collected under this section must be deposited into  
10 the water rights processing and dam safety account created in section  
11 2 of this act.

12 (3) The department may issue either an order under RCW 43.27A.190  
13 or a civil penalty under RCW 90.03.600, or both, to the owner of a  
14 permit exempt withdrawal who fails to file the registration form and  
15 fee required in subsection (2) of this section. Before issuing an  
16 order or penalty, the department shall inform the owner in writing by  
17 registered mail with return receipt that the registration form and fee  
18 must be remitted within thirty days. An order issued under this  
19 subsection may require the owner to cease withdrawing and using water  
20 until the form and fee have been filed. If the owner continues to  
21 refuse to file the form and fee, the department may issue an order  
22 requiring that the subject well or wells be decommissioned.

23 (4) A permit exempt withdrawal that has not been registered shall  
24 not be recognized as a water right under a general adjudication of  
25 water rights held under chapter 90.03 RCW.

26 NEW SECTION. Sec. 5. A new section is added to chapter 90.03 RCW  
27 to read as follows:

28 The department must adjust the fees authorized in RCW 90.03.470 and  
29 90.44.050 on a periodic basis to reflect the direct administrative  
30 costs incurred in the processing of water right applications and change  
31 applications and the safety inspection of hydraulic works and plans and  
32 specifications for such works.

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

35 (1) The department shall submit a report to the legislature prior  
36 to December 31, 2011, and biennially thereafter until December 31,



1 2019, on the status of the backlog of applications for water right  
2 permits, the effectiveness of processing water right permit  
3 applications to a conclusion within twelve months, and the  
4 appropriateness of the fee amounts.

5 (2) This section expires January 1, 2020.

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