

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6267

Chapter 285, Laws of 2010

(partial veto)

61st Legislature
2010 Regular Session

WATER RIGHT APPLICATIONS--PROCESSING

EFFECTIVE DATE: 06/10/10

Passed by the Senate March 11, 2010
YEAS 46 NAYS 2

BRAD OWEN

President of the Senate

Passed by the House March 11, 2010
YEAS 96 NAYS 1

FRANK CHOPP

Speaker of the House of Representatives

Approved April 1, 2010, 3:07 p.m., with
the exception of Sections 9, 10, 14, and
15 which are vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of
the Senate of the State of
Washington, do hereby certify that
the attached is **ENGROSSED SECOND
SUBSTITUTE SENATE BILL 6267** as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 2, 2010

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6267

AS AMENDED BY THE HOUSE

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By Senate Ways & Means (originally sponsored by Senators Rockefeller and Honeyford; by request of Department of Ecology)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to water right processing improvements; amending
2 RCW 90.03.265, 90.14.065, 90.44.100, and 90.44.100; adding new sections
3 to chapter 90.03 RCW; adding new sections to chapter 90.44 RCW;
4 creating new sections; providing an effective date; and providing an
5 expiration date.

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

7 NEW SECTION. **Sec. 1.** Water is an essential element for economic
8 prosperity and it generates new, family-wage jobs and state revenues.
9 It is the intent of the legislature to provide both water right
10 applicants and the department of ecology with the necessary tools to
11 expedite the processing of water right applications depending on the
12 needs of the project and agency workload.

13 NEW SECTION. **Sec. 2.** Sufficient resources to support the
14 department of ecology's water resource program are essential for
15 effective and sustainable water management that provides certainty to
16 processed applications. The department of ecology shall review current
17 water resource functions and fee structures, and report to the

1 legislature and the governor by September 1, 2010, on improvements to
2 make the program more self- sustaining and efficient.

3 **Sec. 3.** RCW 90.03.265 and 2003 c 70 s 6 are each amended to read
4 as follows:

5 (1)(a) Any applicant for a new withdrawal or a change, transfer, or
6 amendment of a water right pending before the department((~~τ~~)) may
7 initiate a cost-reimbursement agreement with the department to provide
8 expedited review of the application. A cost-reimbursement agreement
9 may ((~~only~~)) be initiated under this section if the applicant agrees to
10 pay for, or as part of a cooperative effort agrees to pay for, the cost
11 of processing his or her application and all other applications from
12 the same source of supply which must be acted upon before the
13 applicant's request because they were filed prior to the date of when
14 the applicant filed.

15 (b) The requirement to pay for the cost of other applications under
16 (a) of this subsection does not apply to an application for a new
17 appropriation that would not diminish the water available to earlier
18 pending applicants for new appropriations from the same source of
19 supply.

20 (c) The requirement to pay for the cost of processing other
21 applications under (a) of this subsection does not apply to an
22 application for a change, transfer, or other amendment that would not
23 diminish the water available to earlier pending applicants for changes
24 or transfers from the same source of supply.

25 (d) In determining whether an application would not diminish the
26 water available to earlier pending applicants, the department shall
27 consider any water impoundment or other water resource management
28 mitigation technique proposed by the applicant under RCW 90.03.255 or
29 90.44.055.

30 (e) The department may enter into cost-reimbursement agreements
31 provided resources are available and shall use the process established
32 under RCW 43.21A.690 for entering into cost-reimbursement agreements.
33 The department's share of work related to a cost-reimbursement
34 application, such as final certificate approval, must be prioritized
35 within the framework of other water right processing needs and as
36 determined by agency rule.

1 (f) Each individual applicant is responsible for his or her own
2 appeal costs that may result from a water right decision made by the
3 department under this section. In the event that the department's
4 approval of an application under this section is appealed under chapter
5 43.21B RCW by a third party, the applicant for the water right in
6 question must reimburse the department for the cost of defending the
7 decision before the pollution control hearings board unless otherwise
8 agreed to by the applicant and the department. If an applicant appeals
9 either an approval or a denial made by the department under this
10 section, the applicant is responsible only for its own appeal costs.

11 (2) In pursuing a cost-reimbursement project, the department must
12 determine the source of water proposed to be diverted or withdrawn
13 from, including the boundaries of the area that delimits the source.
14 The department must determine if any other water right permit
15 applications are pending from the same source. A water source may
16 include surface water only, groundwater only, or surface and
17 groundwater together if the department finds they are hydraulically
18 connected. The department shall consider technical information
19 submitted by the applicant in making its determinations under this
20 subsection. The department may recover from a cost-reimbursement
21 applicant its own costs in making the same source determination under
22 this subsection.

23 (3) Upon request of the applicant seeking cost-reimbursement
24 processing, the department may elect to initiate a coordinated cost-
25 reimbursement process. To initiate this process, the department must
26 notify in writing all persons who have pending applications on file for
27 a new appropriation, change, transfer, or amendment of a water right
28 from that water source. A water source may include surface water only,
29 groundwater only, or surface and groundwater together if the department
30 determines that they are hydraulically connected. The notice must be
31 posted on the department's web site and published in a newspaper of
32 general circulation in the area where affected properties are located.
33 The notice must also be made individually by way of mail to:

34 (a) Inform those applicants that cost-reimbursement processing of
35 applications within the described water source is being initiated;

36 (b) Provide to individual applicants the criteria under which the
37 applications will be examined and determined;

1 (c) Provide to individual applicants the estimated cost for having
2 an application processed on a cost-reimbursement basis;

3 (d) Provide an estimate of how long the cost-reimbursement process
4 will take before an application is approved or denied; and

5 (e) Provide at least sixty days for the applicants to respond in
6 writing regarding the applicant's decision to participate in the cost-
7 reimbursement process.

8 (4) The applicant initiating the cost-reimbursement request must
9 pay for the cost of the determination under subsections (2) and (3) of
10 this section and other costs necessary for the initial phase of cost-
11 reimbursement processing. The cost for each applicant for conducting
12 processing under a coordinated cost-reimbursement agreement must be
13 based primarily on the proportionate quantity of water requested by
14 each applicant. The cost may be adjusted if it appears that an
15 application will require a disproportionately greater amount of time
16 and effort to process due to its complexity.

17 (5)(a) Only the department may approve or deny a water right
18 application processed under this section, and such a final decision
19 remains solely the responsibility and function of the department. The
20 department retains full authority to amend, refuse, or approve any work
21 product provided by any consultant under this section. The department
22 may recover its costs related to: (i) The review of a consultant to
23 ensure that no conflict of interest exists; (ii) the management of
24 consultant contracts and cost-reimbursement agreements; and (iii) the
25 review of work products provided by participating consultants.

26 (b) For any cost-reimbursement process initiated under subsection
27 (1) of this section, the applicant may, after consulting with the
28 department, select a prequalified consultant listed by the department
29 under subsection (7) of this section or may be assigned such a
30 prequalified consultant by the department.

31 (c) For any coordinated cost-reimbursement process initiated under
32 subsection (3) of this section, the applicant may, after consulting
33 with the department, select a prequalified consultant listed by the
34 department under subsection (7) of this section or may be assigned a
35 prequalified consultant by the department.

36 (d) In lieu of having one or more of the work products performed by
37 a prequalified consultant listed under subsection (7) of this section,
38 the department may, at its discretion, recognize specific work

1 completed by an applicant or an applicant's consultant prior to the
2 initiation of cost-reimbursement processing. The department may also,
3 at its discretion, authorize the use of such a consultant to perform a
4 specific scope of the work that would otherwise be assigned to
5 prequalified consultants listed under subsection (7) of this section.

6 (e) At any point during the cost-reimbursement process, the
7 department may request or accept technical information, data, and
8 analysis from the applicant or the applicant's consultant to support
9 the cost-reimbursement process or the department's decision on the
10 application.

11 (6) The department is authorized to adopt rules or guidance
12 providing minimum qualifications and standards for any consultant's
13 submission of work products under this section, including standards for
14 submission of technical information, scientific analysis, work product
15 documentation, review for conflict of interest, and report presentation
16 that such a consultant must meet.

17 (7) The department must provide notice to potential consultants of
18 the opportunity to be considered for inclusion on the list of cost-
19 reimbursement consultants to whom work assignments will be made. The
20 department must competitively select an appropriate number of
21 consultants who are qualified by training and experience to investigate
22 and make recommendations on the disposition of water right
23 applications. The prequalified consultant list must be renewed at
24 least every six years, though the department may add qualified cost-
25 reimbursement consultants to the list at any time. The department must
26 enter a master contract with each consultant selected and thereafter
27 make work assignments based on availability and qualifications.

28 (8) The department may remove any consultant from the consultant
29 list for poor performance, malfeasance, or excessive complaints from
30 cost-reimbursement participants. The department may interview any
31 cost-reimbursement consultant to determine whether the person is
32 qualified for this work, and must spot-check the work of consultants to
33 ensure that the public is being competently served.

34 (9) When a prequalified cost-reimbursement consultant from the
35 department's list described in subsection (7) of this section is
36 assigned or selected to investigate an application or set of
37 applications, the consultant must document its findings and recommended
38 disposition in the form of written draft technical reports and

1 preliminary draft reports of examination. Within two weeks of the
2 department receiving draft technical reports and preliminary draft
3 reports of examination, the department shall provide the applicant such
4 documents for review and comment prior to their completion by the
5 consultant. The department shall consider such comments by the
6 applicant prior to the department's issuance of a draft report of
7 examination. The department may modify the preliminary draft reports
8 of examination submitted by the consultant. The department's decision
9 on a permit application is final unless it is appealed to the pollution
10 control hearings board under chapter 43.21B RCW.

11 (10) If an applicant elects not to participate in a cost-
12 reimbursement process, the application remains on file with the
13 department, retains its priority date, and may be processed under
14 regular processing, priority processing, expedited processing,
15 coordinated cost-reimbursement processing, cost-reimbursement
16 processing, or through conservancy board processing as authorized under
17 chapter 90.80 RCW.

18 NEW SECTION. Sec. 4. A new section is added to chapter 90.03 RCW
19 to read as follows:

20 The water rights processing account is created in the state
21 treasury. All receipts from the fees collected under sections 5, 7,
22 and 12 of this act must be deposited into the account. Money in the
23 account may be spent only after appropriation. Expenditures from the
24 account may only be used to support the processing of water right
25 applications for a new appropriation, change, transfer, or amendment of
26 a water right as provided in this chapter and chapters 90.42 and 90.44
27 RCW or for the examination, certification, and renewal of certification
28 of water right examiners as provided in section 7 of this act.

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

31 (1) The department may expedite processing of applications within
32 the same source of water on its own volition when there is interest
33 from a sufficient number of applicants or upon receipt of written
34 requests from at least ten percent of the applicants within the same
35 source of water.

1 (2) If the conditions of subsection (1) of this section have been
2 met and the department determines that the public interest is best
3 served by expediting applications within a water source, the department
4 must notify in writing all persons who have pending applications on
5 file for a new appropriation, change, transfer, or amendment of a water
6 right from that water source. A water source may include surface water
7 only, groundwater only, or surface and groundwater together if the
8 department determines that they are hydraulically connected. The
9 notice must be posted on the department's web site and published in a
10 newspaper of general circulation in the area where affected properties
11 are located. The notice must also be made individually by way of mail
12 to:

13 (a) Inform those applicants that expedited processing of
14 applications within the described water source is being initiated;

15 (b) Provide to individual applicants the criteria under which the
16 applications will be examined and determined;

17 (c) Provide to individual applicants the estimated cost for having
18 an application processed on an expedited basis;

19 (d) Provide an estimate of how long the expedited process will take
20 before an application is approved or denied; and

21 (e) Provide at least sixty days for the applicants to respond in
22 writing regarding the applicant's decision to participate in the
23 expedited processing of their applications.

24 (3) In addition to the application fees provided in RCW 90.03.470,
25 the department must recover the full cost of processing all the
26 applications from applicants who elect to participate within the water
27 source through expedited processing fees. The department must
28 calculate an expedited processing fee based primarily on the
29 proportionate quantity of water requested by each applicant and may
30 adjust the fee if it appears that the application will require a
31 disproportionately greater amount of time and effort to process due to
32 its complexity. Any application fees that were paid by the applicant
33 under RCW 90.03.470 must be credited against the applicant's share of
34 the cost of processing applications under the provisions of this
35 section.

36 (4) The expedited processing fee must be collected by the
37 department prior to the expedited processing of an application.
38 Revenue collected from these fees must be deposited into the water

1 rights processing account created in section 4 of this act. An
2 applicant who has stated in writing that he or she wants his or her
3 application processed using the expedited procedures in this section
4 must transmit the processing fee within sixty days of the written
5 request. Failure to do so will result in the applicant not being
6 included in expedited processing for that water source.

7 (5) If an applicant elects not to participate in expedited
8 processing, the application remains on file with the department, the
9 applicant retains his or her priority date, and the application may be
10 processed through regular processing, priority processing, expedited
11 processing, coordinated cost-reimbursement processing, cost-
12 reimbursement processing, or through conservancy board processing as
13 authorized under chapter 90.80 RCW. Such an application may not be
14 processed through expedited processing within twelve months after the
15 department's issuance of decisions on participating applications at the
16 conclusion of expedited processing unless the applicant agrees to pay
17 the full proportionate share that would otherwise have been paid during
18 such processing. Any proceeds collected from an applicant under this
19 delayed entry into expedited processing shall be used to reimburse the
20 other applicants who participated in the previous expedited processing
21 of applications, provided sufficient proceeds remain to fully cover the
22 department's cost of processing the delayed entry application and the
23 department's estimated administrative costs to reimburse the previously
24 expedited applicants.

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

27 The department must post notice on its web site and provide
28 additional electronic notice and opportunity for comment to affected
29 federally recognized tribal governments concurrently when providing
30 notice to applicants under RCW 90.03.265 and sections 5 and 12 of this
31 act.

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

34 (1) The department shall establish and maintain a list of certified
35 water right examiners. Certified water right examiners on the list are
36 eligible to perform final proof examinations of permitted water uses

1 leading to the issuance of a water right certificate under RCW
2 90.03.330. The list must be updated annually and must be made
3 available to the public through written and electronic media.

4 (2) In order to qualify, an individual must be registered in
5 Washington as a professional engineer, professional land surveyor, or
6 registered hydrogeologist, or an individual must demonstrate at least
7 five years of applicable experience to the department, or be a board
8 member of a water conservancy board. Qualified individuals must also
9 pass a written examination prior to being certified by the department.
10 Such an examination must be administered by either the department or an
11 entity formally approved by the department. Each certified water right
12 examiner must demonstrate knowledge and competency regarding:

- 13 (a) Water law in the state of Washington;
- 14 (b) Measurement of the flow of water through open channels and
15 enclosed pipes;
- 16 (c) Water use and water level reporting;
- 17 (d) Estimation of the capacity of reservoirs and ponds;
- 18 (e) Irrigation crop water requirements;
- 19 (f) Aerial photo interpretation;
- 20 (g) Legal descriptions of land parcels;
- 21 (h) Location of land and water infrastructure through the use of
22 maps and global positioning;
- 23 (i) Proper construction and sealing of well bores; and
- 24 (j) Other topics related to the preparation and certification of
25 water rights in Washington state.

26 (3) Except as provided in subsection (9) of this section, upon
27 completion of a water appropriation and putting water to beneficial
28 use, in order to receive a final water right certificate, the permit
29 holder must secure the services of a certified water right examiner who
30 has been tested and certified by the department. The examiner shall
31 carry out a final examination of the project to verify its completion
32 and to determine and document for the permit holder and the department
33 the amount of water that has been appropriated for beneficial use, the
34 location of diversion or withdrawal and conveyance facilities, and the
35 actual place of use. The examiner shall take measurements or make
36 estimates of the maximum diversion or withdrawal, the capacity of water
37 storage facilities, the acreage irrigated, the type and number of
38 residences served, the type and number of stock watered, and other

1 information relevant to making a final determination of the amount of
2 water beneficially used. The examiner shall take photographs of the
3 facilities to document the use or uses of water and the photographs
4 must be submitted with the examiner's report to the department. The
5 department shall specify the format and required content of the reports
6 and may provide a form for that purpose.

7 (4) The department may suspend or revoke a certification based on
8 poor performance, malfeasance, failure to acquire continuing education
9 credits, or excessive complaints from the examiner's customers. The
10 department may require the retesting of an examiner. The department
11 may interview any examiner to determine whether the person is qualified
12 for this work. The department shall spot-check the work of examiners
13 to ensure that the public is being competently served. Any person
14 aggrieved by an order of the department including the granting, denial,
15 revocation, or suspension of a certificate issued by the department
16 under this chapter may appeal pursuant to chapter 43.21B RCW.

17 (5) The decision regarding whether to issue a final water right
18 certificate is solely the responsibility and function of the
19 department.

20 (6) The department shall make its final decision under RCW
21 90.03.330 within sixty days of the date of receipt of the proof of
22 examination from the certified water right examiner, unless otherwise
23 requested by the applicant or returned for correction by the
24 department. The department may return an initial proof of examination
25 for correction within thirty days of the department's receipt of such
26 initial proof from a certified water right examiner. Such proof must
27 be returned to both the certified water right examiner and the
28 applicant. Within thirty days of the department's receipt of such
29 returned proof from the certified water right examiner, the department
30 shall make its final decision under RCW 90.03.330, unless otherwise
31 requested by the applicant.

32 (7) Each certified water right examiner must complete eight hours
33 annually of qualifying continuing education in the water resources
34 field. The department shall determine and specify the qualifying
35 continuing education and shall inform examiners of the opportunities.
36 The department shall track whether examiners are current in their
37 continuing education and may suspend the certification of an examiner
38 who has not complied with the continuing education requirement.

1 (8) Each certified water right examiner must be bonded for at least
2 fifty thousand dollars.

3 (9) The department may waive the requirement to secure the services
4 of a certified water right examiner in situations in which the
5 department has already conducted a final proof of examination or finds
6 it unnecessary for purposes of issuing a certificate of water right.

7 (10) The department shall establish and collect fees for the
8 examination, certification, and renewal of certification of water right
9 examiners. Revenue collected from these fees must be deposited into
10 the water rights processing account created in section 4 of this act.
11 Pursuant to RCW 43.135.055, the department is authorized to set fees
12 for examination, certification, and renewal of certification for water
13 right examiners.

14 (11) The department may adopt rules appropriate to carry out the
15 purposes of this section.

16 **Sec. 8.** RCW 90.14.065 and 1987 c 93 s 1 are each amended to read
17 as follows:

18 (1)(a) Any person or entity, or successor to such person or entity,
19 having a statement of claim on file with the water rights claims
20 registry (~~(on April 20, 1987,)~~) may submit to the department of ecology
21 for filing(~~(r)~~) an amendment to such a statement of claim if the
22 submitted amendment is based on:

23 ~~((1))~~ (i) An error in estimation of the quantity of the
24 applicant's water claim prescribed in RCW 90.14.051 if the applicant
25 provides reasons for the failure to claim such right in the original
26 claim;

27 ~~((2))~~ (ii) A change in circumstances not foreseeable at the time
28 the original claim was filed, if such change in circumstances relates
29 only to the manner of transportation or diversion of the water and not
30 to the use or quantity of such water; or

31 ~~((3))~~ (iii) The amendment is ministerial in nature.

32 (b) The department shall accept any such submission and file the
33 same in the registry unless the department by written determination
34 concludes that the requirements of (a)(i), (ii), or (iii) of this
35 subsection (~~((1), (2), or (3) of this section)~~) have not been
36 satisfied.

1 (2) In addition to subsection (1) of this section, a surface water
2 right claim may be changed or transferred in the same manner as a
3 permit or certificate under RCW 90.03.380, and a water right claim for
4 groundwater may be changed or transferred as provided under RCW
5 90.03.380 and 90.44.100.

6 (3) Any person aggrieved by a determination of the department may
7 obtain a review thereof by filing a petition for review with the
8 pollution control hearings board within thirty days of the date of the
9 determination by the department. The provisions of RCW 90.14.081 shall
10 apply to any amendment filed or approved under this section.

11 *Sec. 9. RCW 90.44.100 and 2009 c 183 s 16 are each amended to read
12 as follows:

13 (1) After an application to, and upon the issuance by the
14 department of an amendment to the appropriate permit or certificate of
15 groundwater right, the holder of a valid right to withdraw public
16 groundwaters may, without losing the holder's priority of right,
17 construct wells or other means of withdrawal at a new location in
18 substitution for or in addition to those at the original location, or
19 the holder may change the manner or the place of use of the water.

20 (2) An amendment to construct replacement or a new additional well
21 or wells at a location outside of the location of the original well or
22 wells or to change the manner or place of use of the water shall be
23 issued only after publication of notice of the application and findings
24 as prescribed in the case of an original application. Such amendment
25 shall be issued by the department only on the conditions that: (a) The
26 additional or replacement well or wells shall tap the same body of
27 public groundwater as the original well or wells; (b) where a
28 replacement well or wells is approved, the use of the original well or
29 wells shall be discontinued and the original well or wells shall be
30 properly decommissioned as required under chapter 18.104 RCW; (c) where
31 an additional well or wells is constructed, the original well or wells
32 may continue to be used, but the combined total withdrawal from the
33 original and additional well or wells shall not enlarge the right
34 conveyed by the original permit or certificate; and (d) other existing
35 rights shall not be impaired. The department may specify an approved
36 manner of construction and shall require a showing of compliance with

1 the terms of the amendment, as provided in RCW 90.44.080 in the case of
2 an original permit.

3 (3) The construction of a replacement or new additional well or
4 wells at the location of the original well or wells shall be allowed
5 without application to the department for an amendment. However, the
6 following apply to such a replacement or new additional well: (a) The
7 well shall tap the same body of public groundwater as the original well
8 or wells; (b) if a replacement well is constructed, the use of the
9 original well or wells shall be discontinued and the original well or
10 wells shall be properly decommissioned as required under chapter 18.104
11 RCW; (c) if a new additional well is constructed, the original well or
12 wells may continue to be used, but the combined total withdrawal from
13 the original and additional well or wells shall not enlarge the right
14 conveyed by the original water use permit or certificate; (d) the
15 construction and use of the well shall not interfere with or impair
16 water rights with an earlier date of priority than the water right or
17 rights for the original well or wells; (e) the replacement or
18 additional well shall be located no closer than the original well to a
19 well it might interfere with; (f) the department may specify an
20 approved manner of construction of the well; and (g) the department
21 shall require a showing of compliance with the conditions of this
22 subsection (3).

23 (4) As used in this section, the "location of the original well or
24 wells" of a water right permit or certificate is the area described as
25 the point of withdrawal in the original public notice published for the
26 application for the water right for the well. The location of the
27 original well or wells of a water right claim filed under chapter 90.14
28 RCW is the area located within a one-quarter mile radius of the current
29 well or wells.

30 (5) The development and use of a small irrigation impoundment, as
31 defined in RCW 90.03.370(8), does not constitute a change or amendment
32 for the purposes of this section. The exemption expressly provided by
33 this subsection shall not be construed as requiring an amendment of any
34 existing water right to enable the holder of the right to store water
35 governed by the right.

36 (6) This section does not apply to a water right involved in an
37 approved local water plan created under RCW 90.92.090 or a banked water
38 right under RCW 90.92.070.

*Sec. 9 was vetoed. See message at end of chapter.

1 *Sec. 10. RCW 90.44.100 and 2003 c 329 s 3 are each amended to read
2 as follows:

3 (1) After an application to, and upon the issuance by the
4 department of an amendment to the appropriate permit or certificate of
5 groundwater right, the holder of a valid right to withdraw public
6 groundwaters may, without losing the holder's priority of right,
7 construct wells or other means of withdrawal at a new location in
8 substitution for or in addition to those at the original location, or
9 the holder may change the manner or the place of use of the water.

10 (2) An amendment to construct replacement or a new additional well
11 or wells at a location outside of the location of the original well or
12 wells or to change the manner or place of use of the water shall be
13 issued only after publication of notice of the application and findings
14 as prescribed in the case of an original application. Such amendment
15 shall be issued by the department only on the conditions that: (a) The
16 additional or replacement well or wells shall tap the same body of
17 public groundwater as the original well or wells; (b) where a
18 replacement well or wells is approved, the use of the original well or
19 wells shall be discontinued and the original well or wells shall be
20 properly decommissioned as required under chapter 18.104 RCW; (c) where
21 an additional well or wells is constructed, the original well or wells
22 may continue to be used, but the combined total withdrawal from the
23 original and additional well or wells shall not enlarge the right
24 conveyed by the original permit or certificate; and (d) other existing
25 rights shall not be impaired. The department may specify an approved
26 manner of construction and shall require a showing of compliance with
27 the terms of the amendment, as provided in RCW 90.44.080 in the case of
28 an original permit.

29 (3) The construction of a replacement or new additional well or
30 wells at the location of the original well or wells shall be allowed
31 without application to the department for an amendment. However, the
32 following apply to such a replacement or new additional well: (a) The
33 well shall tap the same body of public groundwater as the original well
34 or wells; (b) if a replacement well is constructed, the use of the
35 original well or wells shall be discontinued and the original well or
36 wells shall be properly decommissioned as required under chapter 18.104
37 RCW; (c) if a new additional well is constructed, the original well or
38 wells may continue to be used, but the combined total withdrawal from

1 the original and additional well or wells shall not enlarge the right
2 conveyed by the original water use permit or certificate; (d) the
3 construction and use of the well shall not interfere with or impair
4 water rights with an earlier date of priority than the water right or
5 rights for the original well or wells; (e) the replacement or
6 additional well shall be located no closer than the original well to a
7 well it might interfere with; (f) the department may specify an
8 approved manner of construction of the well; and (g) the department
9 shall require a showing of compliance with the conditions of this
10 subsection (3).

11 (4) As used in this section, the "location of the original well or
12 wells" of a water right permit or certificate is the area described as
13 the point of withdrawal in the original public notice published for the
14 application for the water right for the well. The location of the
15 original well or wells of a water right claim filed under chapter 90.14
16 RCW is the area located within a one-quarter mile radius of the current
17 well or wells.

18 (5) The development and use of a small irrigation impoundment, as
19 defined in RCW 90.03.370(8), does not constitute a change or amendment
20 for the purposes of this section. The exemption expressly provided by
21 this subsection shall not be construed as requiring an amendment of any
22 existing water right to enable the holder of the right to store water
23 governed by the right.

*Sec. 10 was vetoed. See message at end of chapter.

24 NEW SECTION. Sec. 11. A new section is added to chapter 90.44 RCW
25 to read as follows:

26 Applications to appropriate groundwater under a cost-reimbursement
27 agreement must be processed in accordance with RCW 90.03.265 when an
28 applicant requests the assignment of a cost-reimbursement consultant as
29 provided in RCW 43.21A.690.

30 NEW SECTION. Sec. 12. A new section is added to chapter 90.44 RCW
31 to read as follows:

32 (1) The department may expedite processing of applications within
33 the same source of water on its own volition when there is interest
34 from a sufficient number of applicants or upon receipt of written
35 requests from at least ten percent of the applicants within the same
36 source of water.

1 (2) If the conditions of subsection (1) of this section have been
2 met and the department determines that the public interest is best
3 served by expediting applications within a water source, the department
4 must notify in writing all persons who have pending applications on
5 file for a new appropriation, change, transfer, or amendment of a water
6 right from that water source. A water source may include surface water
7 only, groundwater only, or surface and groundwater together if the
8 department determines that they are hydraulically connected. The
9 notice must be posted on the department's web site and published in a
10 newspaper of general circulation in the area where affected properties
11 are located. The notice must also be made individually by way of mail
12 to:

13 (a) Inform those applicants that expedited processing of
14 applications within the described water source is being initiated;

15 (b) Provide to individual applicants the criteria under which the
16 applications will be examined and determined;

17 (c) Provide to individual applicants the estimated cost for having
18 an application processed on an expedited basis;

19 (d) Provide an estimate of how long the expedited process will take
20 before an application is approved or denied; and

21 (e) Provide at least sixty days for the applicants to respond in
22 writing regarding the applicant's decision to participate in expedited
23 processing of their applications.

24 (3) In addition to the application fees provided in RCW 90.03.470,
25 the department must recover the full cost of processing all the
26 applications from applicants who elect to participate within the water
27 source through expedited processing fees. The department must
28 calculate an expedited processing fee based primarily on the
29 proportionate quantity of water requested by each applicant and may
30 adjust the fee if it appears that an application will require a
31 disproportionately greater amount of time and effort to process due to
32 its complexity. Any application fees that were paid by the applicant
33 under RCW 90.03.470 must be credited against the applicant's share of
34 the cost of processing applications under the provisions of this
35 section.

36 (4) The expedited processing fee must be collected by the
37 department prior to the expedited processing of an application.
38 Revenue collected from these fees must be deposited into the water

1 rights processing account created in section 4 of this act. An
2 applicant who has stated in writing that he or she wants his or her
3 application processed using the expedited procedures in this section
4 must transmit the processing fee within sixty days of the written
5 request. Failure to do so will result in the applicant not being
6 included in expedited processing for that water source.

7 (5) If an applicant elects not to participate in expedited
8 processing, the application remains on file with the department, the
9 applicant retains his or her priority date, and the application may be
10 processed through regular processing, priority processing, expedited
11 processing, coordinated cost-reimbursement processing, cost-
12 reimbursement processing, or through conservancy board processing as
13 authorized under chapter 90.80 RCW. Such an application may not be
14 processed through expedited processing within twelve months after the
15 department's issuance of decisions on participating applications at the
16 conclusion of expedited processing unless the applicant agrees to pay
17 the full proportionate share that would otherwise have been paid during
18 such processing. Any proceeds collected from an applicant under this
19 delayed entry into expedited processing shall be used to reimburse the
20 other applicants who participated in the previous expedited processing
21 of applications, provided sufficient proceeds remain to fully cover the
22 department's cost of processing the delayed entry application and the
23 department's estimated administrative costs to reimburse the previously
24 expedited applicants.

25 NEW SECTION. **Sec. 13.** A new section is added to chapter 90.03 RCW
26 to read as follows:

27 Nothing in this act affects or diminishes the processing of water
28 right applications under any other existing authority, including but
29 not limited to existing authority for the priority processing of
30 applications by the department.

31 *NEW SECTION. **Sec. 14. Section 9 of this act expires June 30,**
32 **2019.**

**Sec. 14 was vetoed. See message at end of chapter.*

33 *NEW SECTION. **Sec. 15. Section 10 of this act takes effect June**
34 **30, 2019.**

**Sec. 15 was vetoed. See message at end of chapter.*

1 NEW SECTION. **Sec. 16.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

Passed by the Senate March 11, 2010.

Passed by the House March 11, 2010.

Approved by the Governor April 1, 2010, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 2, 2010.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Sections 9, 10, 14
and 15, Engrossed Second Substitute Senate Bill 6267 entitled:

"AN ACT Relating to water right processing improvements."

This bill provides applicants and the Department of Ecology with tools
that can be used, when appropriate, to expedite the processing of
water right applications.

Sections 9 and 10 define the original location of a well associated
with a water right claim as the area located within a one-quarter mile
radius of the current well or wells. The original location of a well
is used to determine when a replacement well requires a formal change
to the water right.

The specific definitions in Sections 9 and 10 would reduce the
Department of Ecology's flexibility and impair its current discretion
to decide when a replacement well warrants formal review and approval.
Such flexibility and discretion is needed when the impacts of a
replacement well will depend on the circumstances. Sections 14 and 15
provide expiration and effective dates for Sections 9 and 10,
respectively.

For these reasons, I have vetoed Sections 9, 10, 14 and 15 of
Engrossed Second Substitute Senate Bill 6267.

With the exception of Sections 9, 10, 14 and 15, Engrossed Second
Substitute Senate Bill 6267 is approved."