

SENATE BILL REPORT

SB 5486

As Reported By Senate Select Committee On:
Water Policy, February 27, 1995

Title: An act relating to the processing of water rights.

Brief Description: Affecting the processing of water rights.

Sponsors: Senators Rasmussen, Morton, Haugen, Winsley and Palmer.

Brief History:

Committee Activity: Water Policy: 2/27/95 [DPS-WM].

Ways & Means: 3/21/95

SENATE SELECT COMMITTEE ON WATER POLICY

Majority Report: That Substitute Senate Bill No. 5486 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Drew, Fraser, Haugen, Hochstatter, Morton, Newhouse, Oke, Rasmussen, Spanel, Sutherland, Swecker and Winsley.

Staff: Bob Lee (786-7404)

Background: The water right permitting process was first established in 1917 at which time a fee schedule was established for processing water right applications. The existing fee schedule pays for about 2 percent of the cost of the water right permitting process incurred by the Department of Ecology.

During the 1993 session, a Water Right Fee Task Force was created. It was given two major assignments: to recommend to the Legislature statutory changes to improve the efficiency of the water right permit process, and to develop a fee schedule whereby water right applicants pay 50 percent of the cost of the water right program.

Legislation containing the recommendations of the task force, including a fee schedule, was submitted to the 1994 Legislature but was not enacted.

Also in 1993, changes were made in the operating budget that reduced the funding for processing water right applications from \$3,750,000 in FY 94 to \$1,375,000 for FY 95. According to the proviso, the appropriation level for processing water right applications could be increased if legislation was enacted that generated revenue from fees that paid 50 percent of the combined cost of processing water right applications and water resources data management. The current level of general funds appropriation for these two components was \$2.4 million and the target for fee revenue was about \$2.4 million also. When the fee legislation did not pass, the Department of Ecology's staff assigned to processing water right applications was reduced by about two-thirds. The \$1 million appropriation for data management for FY 95 was not affected.

At the time the fee schedule was being developed during the 1994 session, the rate of new water right applications was 1800 per year. In the last year, the level of new applications has dropped to 1300 per year.

If additional revenue is provided for processing water right applications, the department anticipates having to hire and train new staff. As a result, the assumption of the number of water right decisions per staff for the upcoming biennium has been reduced.

Summary of Substitute Bill: To catch up on the backlog of water right applications, the department is required to expedite processing applications in areas of no known shortage and to promptly deny applications in areas of known shortage.

The date of priority of water rights established in the future is changed to the date that a completed application is submitted. The department develops by rule what is to constitute a completed application.

The department may require the applicant to provide information needed to support a water right application but such requirements must be directly related to the application under consideration.

The following additional types of transfers and changes to existing water rights may be approved as long as existing water rights are not affected: the season of use may be made as long as the water use remains in the same general category; surface water diversions may be changed to groundwater withdrawals or vice versa if the two sources are in direct hydraulic continuity; the right embodied in a permit that has not yet been applied to beneficial use may be transferred or changed, but only the amount of water that has been beneficially used under a certificate may be transferred or changed. However, in neither case may the amount diverted for beneficial use be enlarged as to the annual quantity.

A person may relocate the point of a groundwater or surface water diversion up to 1/4 mile as long as other water rights are not impaired and the water right holder provides at least 15 days advance notice to the department. Clarification is added regarding a change to the point of diversion to reduce possible impairment of other existing rights or harm to the fishery resource.

Once a holder of a water right completes an approved change or transfer, the holder must notify the department who then issues a superseding certificate that reflects the change.

The department is required to encourage the filing of consolidated water right applications that are under a single ownership and to provide forms for consolidated applications.

The department is provided authority to set aside unappropriated surface water through the adoption of a rule. The department may allocate up to 450 gallons per day from this water right reservation to persons making application for a water right through an expedited process. Informational materials are provided regarding risks of drinking untreated surface water.

The department establishes a register that identifies water right or change applications that are in excess of 3 cubic feet per second for each water resource inventory area in the state.

The department is directed to develop accountability measures to employ in the water right permitting program to assure that funds are being efficiently expended. A water rights program review task force is to review workload standards and targets for the permitting process. The task force remains in effect through June 30, 1999, and monitors the water right permit and data management programs and make recommendations for funding levels and fee changes. By December 1, 1995, the task force must recommend the appropriate future funding sources for data management.

There are two fee schedules established. The first fee schedule starts on July 1, 1995 and terminates on June 30, 1999. The second fee schedule begins on July 1, 1999. The first fee schedule contains an additional amount to fund reduction of the water right backlog.

Statutory exemptions to payment of fees for processing water right permits and certificates for specific uses are repealed.

Authority is provided to the Department of Ecology to regulate water rights. Water rights granted through state issued permits and certificates may be regulated by the department through the issuance of regulatory orders which are appealable to the Pollution Control Hearings Board. The department may regulate water rights issued prior to the 1917 surface water code or the 1945 ground water code by initiating an action in the local superior court.

The interim standards on the use of reclaimed water from wastewater treatment plants are allowed to become permanent standards.

Substitute Bill Compared to Original Bill: The requirement for the Department of Ecology to establish a general permit system for nonconsumptive water uses is deleted.

The restriction that the season of use of an existing water right must remain in the same general category of water use is modified to allow changes to another category of use if specifically authorized in an adopted watershed plan or regional water resource plan.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The first fee schedule takes effect on July 1, 1995. A reduced fee schedule takes effect on July 1, 1999, after the backlog of water rights has been addressed. Other provisions of the bill take effect 90 days after enactment.

Testimony For: Water right applications have been pending with the Department of Ecology for a long time. Action is needed to allow the department to have the resources to process water right applications on a more timely basis.

Testimony Against: None.

Testified: Senator Rasmussen; Senator Swecker.

SENATE SELECT COMMITTEE ON WATER POLICY

Staff: Susan Lucas (786-7711)

Testimony For: The fee schedule in SSB 5486 is not new. It was the result of a great deal of work by the Water Rights Fees Task Force. SSB 5486 contains the task force fee proposal including the provision that the general fund pay for half the cost of the program. There is much support for the general fund support for water rights permit processing. Full funding of the program is important to eliminate the backlog of applications. Funding for regional planning is also important and should include a local match provision.

Testimony Against: Provisions in the bill for expanded use of water transfers will make habitat conservation more difficult.

Testified: Senator Marilyn Rasmussen, prime sponsor (pro); Paul Parker, Washington State Association of Counties (pro); Bruce Wishart, Sierra Club.