

HOUSE BILL REPORT

ESHB 2309

As Passed Legislature

Title: An act relating to water right fees.

Brief Description: Modifying water right fees.

Sponsors: By House Committee on Appropriations (originally sponsored by Representative Linville; by request of Office of Financial Management).

Brief History:

Committee Activity:

Appropriations: 3/29/05, 4/2/05 [DPS].

Floor Activity:

Passed House: 4/19/05, 62-35.

Senate Amended.

Passed Senate: 4/23/05, 32-16.

House Concurred.

Passed House: 4/23/05, 62-34.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Amends fees associated with acquiring or changing a water right.
- Exempts certain actions and hydraulic works from imposition of fees.
- Specifies process for returning applications that do not include the required minimum fee.
- Requires 20% of the fee revenue to be used for a water rights tracking system.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Cody, Conway, Darneille, Dunshee, Grant, Haigh, Hinkle, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McIntire, Miloscia, Schual-Berke and Walsh.

Minority Report: Do not pass. Signed by 9 members: Representatives Alexander, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; McDonald, Assistant Ranking Minority Member; Bailey, Buri, Clements, Pearson, Priest and Talcott.

Staff: Alicia Paatsch (786-7178).

Background:

Under the state Water Code, a person must have a water right for any use of surface water and for all but certain exempted withdrawals of groundwater. A water right is a legal right to use a specified amount of water for a beneficial purpose. The Water Rights Program in Washington is managed by the Department of Ecology (DOE).

The process of acquiring a water right involves a number of steps and the payment of several fees. These fees are established in statute and must be used exclusively for the purpose of carrying out the work and performing the functions of the DOE's division of water resources. An applicant files an application with DOE and pays a minimum examination fee of \$10 based on the amount of water involved in the project.

After its examination, the DOE makes a formal report of examination with a recommendation to either accept, deny, or condition the water right application. If a permit is to be issued, the applicant must pay a \$5 permit fee. The DOE then issues a permit, specifying a timetable for the applicant to meet in developing the water for a beneficial use. After the applicant has actually started using the water, the applicant sends in a certificate fee of \$5 and proof of appropriation, and the DOE issues the final water rights certificate. There are also fees associated with applying to change a point of diversion or place of use, asking for extensions for putting the water to beneficial use, and other services.

Fees were originally set in 1917 and have been subsequently adjusted over the years. The majority of the fees were last adjusted in 1951, when the minimum examination fee was increased from the 1917 fee of \$5 to the current fee of \$10. Other fees were adjusted in 1965 and 1987, and some fees were changed in 1993 on a temporary basis .

Summary of Engrossed Substitute Bill:

Statutory fees related to acquiring a water right or storing water -- and the basis for calculation of these fees -- are amended. Fees for applications to appropriate or store water are assessed at the rate of \$1 per one hundredth cubic foot per second (cfs) and \$2 per acre foot of storage respectively. The minimum fees for applications to appropriate or store water are \$50, and the maximum fee for these types of applications is \$25,000.

Fees for applications to transfer, change, or amend a water right certificate, permit, or claim (and their calculation bases) also are amended. These fees are assessed at the rate of 50 cents per one hundredth cfs of water involved in the change, transfer, or amendment. Fees for applications to change a storage water right are assessed at the rate of \$1 for each acre foot of

water involved in the change. The minimum fee for these types of applications is \$50, and the maximum fee is \$12,500. The fee for a temporary or seasonal change is \$50.

Other water right-related fees are amended. Fees for applications to extend time for beginning construction work or for completing application of water to beneficial use is changed to \$50. This \$50 fee also applies to extensions of time requested under a change or transfer authorization. Fees for recording assignments, preparing and issuing water rights certificates, amending a water right claim, and filing formal protests against granting an application are changed to \$50. No fee is required to comment on a water right application.

Fee exemptions are specified. No fee is required for:

- changes related to donation of a trust water right to the state;
- changes associated with the DOE's acquisition of a trust water right for instream flows or other public purposes;
- changes for which applications are filed with a water conservancy board or the DOE's review of a water conservancy board's record of decision;
- acquisition, storage, or change actions associated with parties to a cost reimbursement agreement;
- emergency withdrawal authorizations or temporary drought-related water right changes received while a drought condition order is in effect; and
- exempts fees for hydraulic workers that are less than ten years old, that the department examined and approved the construction plans and specifications as to its safety. For any hydraulic works more than ten years old, but less than twenty years old, that the department approved for safety, the fee charged shall not exceed the fee for a significant hazard dam.

Other provisions related to imposition of fees are added or removed. Only one examination fee and one certificate fee are imposed on change, transfer, or amendment applications involving a single project operating under more than water right or involving the consolidation or multiple water rights. Statutory fees in the water code for filing and recording a permit or other water rights instruments and for copying and certifying specified documents are removed.

Application process provisions are amended. The number of times the DOE collects fees during the water right application process is reduced from three to two. In addition, an application or request for action related to a water right is deemed incomplete unless at least the minimum specified fee is submitted with the application. The DOE must return any application or request that does not include at least the minimum specified fee with advice as the fee required for submission of the application. The minimum fee is considered a credit to the total fee due, and the DOE must provide notice to the applicant within five working days regarding any additional fees that must be submitted.

Disposition of the water right-related fees collected by the DOE is specified. 80% of the fees are to be deposited in the state general fund. The remaining 20% are to be deposited in the Water Rights Tracking System Account (Tracking System Account), which is established in

the state treasury. Fees from the Tracking System Account may be spent only after appropriation and may be used by the DOE for the development, implementation, and management of a water rights tracking system, including a mapping system and a data base.

Numerous technical revisions are included.

Appropriation: None.

Fiscal Note: Preliminary fiscal note is available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: We believe this program is a General Fund responsibility but there is a benefit to owning a water right; although, we do not believe that applicants should have to pay fees twice, such as conservancy boards. This is a meritorious bill. We did discover that General Fund support is the norm across western states. There was hope that increased fees would create more timely processing of water rights. This is a modest proposal as only one-half of a percent of the program costs would be covered by revenue from this bill. This bill is also modest compared to other states and modes for the Department of Ecology's program that has to deal with drought conditions, environmental needs and population demands. The bill just attempts to take care of the permit portion of DOE's program; we think the bill should look at annual fees like Alaska or cost recovery like California's program.

Testimony Against: The bill does not increase service or provide a benefit to farms from an increase in fees, which creates a difficult situation for farmers. The lack of fees for trust water transfers is not the best way to encourage farmers to give water to the state. We want to keep water in play as well to keep it available for farming.

Persons Testifying: (In support) Josh Baldi, Washington Environment Council; and Kathleen Collins, Washington Water Policy Alliance.

(Opposed) John Stuhlmiller, Farm Bureau.

Persons Signed In To Testify But Not Testifying: None.