
SUBSTITUTE HOUSE BILL 1236

State of Washington

53rd Legislature

1993 Regular Session

By House Committee on Natural Resources & Parks (originally sponsored by Representatives Rust, Pruitt and Sheldon; by request of Department of Ecology)

Read first time 03/03/93.

1 AN ACT Relating to fees for water rights and related approvals;
2 amending RCW 90.03.015, 90.03.270, 90.03.470, and 90.03.471; creating
3 new sections; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that a water right
6 confers significant economic benefits to the water right holder. The
7 fees associated with acquiring a water right have not changed
8 significantly since 1917. Water rights applicants pay less than two
9 percent of the costs of the administration of the water rights program.
10 The legislature finds that, since water rights are of significant
11 value, water rights applicants should contribute more to the cost of
12 administration of the water rights program.

13 The legislature also finds that an abrupt increase in water rights
14 fees could be disruptive to water right holders and applicants. The
15 legislature further finds that water rights applicants have a right to
16 know that the water rights program is being administered efficiently
17 and that the fees charged for various services relate directly to the
18 cost of providing those services.

1 Therefore, the legislature hereby establishes interim fees for the
2 water rights program for the 1993-95 biennium, with the level of fees
3 targeted to account for approximately one-third of the costs of
4 administering the water rights program. The legislature also creates
5 a task force to review the water rights program, to make
6 recommendations for streamlining the application process and increasing
7 the overall efficiency and accountability of the administration of the
8 program, and to return to the legislature with a proposal for a fee
9 schedule where the fee levels relate clearly to the cost of services
10 provided.

11 **Sec. 2.** RCW 90.03.015 and 1987 c 109 s 65 are each amended to read
12 as follows:

13 As used in this chapter:

14 (1) "Department" means the department of ecology;

15 (2) "Director" means the director of ecology; (~~and~~)

16 (3) "Nonconsumptive use" means a water use in which there is no
17 diversion or withdrawal from the source, or in which water is diverted
18 or withdrawn and returned immediately to the source at the point of
19 diversion or withdrawal and meets water quality standards for the
20 source;

21 (4) "Person" means any firm, association, water users' association,
22 corporation, irrigation district, or municipal corporation, as well as
23 an individual;

24 (5) "Reservoir" means any water stored for a beneficial use held
25 behind a dam or dike to a depth of ten feet or more at its deepest
26 point, or of ten or more acre-feet of water. A reservoir is also a
27 water holding impoundment adjacent to a stream channel when water will
28 be required to fill it, if the water in the holding area is of a depth
29 of ten feet or more at its deepest point or is of ten or more acre-
30 feet; and

31 (6) "Short-term water use" means an emergency use of water or a
32 nonrecurring temporary use of water for up to four months duration,
33 with a possible extension of not more than four additional months upon
34 approval by the department.

35 **Sec. 3.** RCW 90.03.270 and 1987 c 109 s 85 are each amended to read
36 as follows:

1 Upon receipt of an application it shall be the duty of the
2 department to make an endorsement thereon of the date of its receipt,
3 and to keep a record of same. If upon examination, the application is
4 found to be defective, it shall be returned to the applicant for
5 correction or completion, and the date and the reasons for the return
6 thereof shall be endorsed thereon and made a record in his office. No
7 application shall lose its priority of filing on account of such
8 defects, provided acceptable maps, drawings and such data as is
9 required by the department shall be filed with the department within
10 such reasonable time as it shall require. Within ten working days of
11 receipt of the complete application, the department shall provide the
12 applicant with an estimate of the applicant's examination and permit
13 fees.

14 **Sec. 4.** RCW 90.03.470 and 1987 c 109 s 98 are each amended to read
15 as follows:

16 (~~The following fees shall be collected by the department in~~
17 ~~advance:~~

18 ~~(1) For the examination of an application for permit to appropriate~~
19 ~~water or on application to change point of diversion, withdrawal,~~
20 ~~purpose or place of use, a minimum of ten dollars, to be paid with the~~
21 ~~application. For each second foot between one and five hundred second~~
22 ~~feet, two dollars per second foot; for each second foot between five~~
23 ~~hundred and two thousand second feet, fifty cents per second foot; and~~
24 ~~for each second foot in excess thereof, twenty cents per second foot.~~
25 ~~For each acre foot of storage up to and including one hundred thousand~~
26 ~~acre feet, one cent per acre foot, and for each acre foot in excess~~
27 ~~thereof, one fifth cent per acre foot. The ten dollar fee payable with~~
28 ~~the application shall be a credit to that amount whenever the fee for~~
29 ~~direct diversion or storage totals more than ten dollars under the~~
30 ~~above schedule and in such case the further fee due shall be the total~~
31 ~~computed amount less ten dollars.~~

32 ~~Within five days from receipt of an application the department~~
33 ~~shall notify the applicant by registered mail of any additional fees~~
34 ~~due under the above schedule and any additional fees shall be paid to~~
35 ~~and received by the department within thirty days from the date of~~
36 ~~filing the application, or the application shall be rejected.~~

37 ~~(2) For filing and recording a permit to appropriate water for~~
38 ~~irrigation purposes, forty cents per acre for each acre to be irrigated~~

1 up to and including one hundred acres, and twenty cents per acre for
2 each acre in excess of one hundred acres up to and including one
3 thousand acres, and ten cents for each acre in excess of one thousand
4 acres; and also twenty cents for each theoretical horsepower up to and
5 including one thousand horsepower, and four cents for each theoretical
6 horsepower in excess of one thousand horsepower, but in no instance
7 shall the minimum fee for filing and recording a permit to appropriate
8 water be less than five dollars. For all other beneficial purposes the
9 fee shall be twice the amount of the examination fee except that for
10 individual household and domestic use, which may include water for
11 irrigation of a family garden, the fee shall be five dollars.

12 (3) For filing and recording any other water right instrument, four
13 dollars for the first hundred words and forty cents for each additional
14 hundred words or fraction thereof.

15 (4) For making a copy of any document recorded or filed in his
16 office, forty cents for each hundred words or fraction thereof, but
17 when the amount exceeds twenty dollars, only the actual cost in excess
18 of that amount shall be charged.

19 (5) For certifying to copies, documents, records or maps, two
20 dollars for each certification.

21 (6) For blueprint copies of a map or drawing, or, for such other
22 work of a similar nature as may be required of the department, at
23 actual cost of the work.

24 (7) For granting each extension of time for beginning construction
25 work under a permit to appropriate water, an amount equal to one half
26 of the filing and recording fee, except that the minimum fee shall be
27 not less than five dollars for each year that an extension is granted,
28 and for granting an extension of time for completion of construction
29 work or for completing application of water to a beneficial use, five
30 dollars for each year that an extension is granted.

31 (8) For the inspection of any hydraulic works to insure safety to
32 life and property, the actual cost of the inspection, including the
33 expense incident thereto.

34 (9) For the examination of plans and specifications as to safety of
35 controlling works for storage of ten acre feet or more of water, a
36 minimum fee of ten dollars, or the actual cost.

37 (10) For recording an assignment either of a permit to appropriate
38 water or of an application for such a permit, a fee of five dollars.

1 ~~(11) For preparing and issuing all water right certificates, five~~
2 ~~dollars.~~

3 ~~(12) For filing and recording a protest against granting any~~
4 ~~application, two dollars.)~~ (1) For the 1993-95 fiscal biennium, the

5 following interim fees shall be collected in advance by the department:

6 (a) For filing with the department each application to appropriate
7 public water, including short-term uses; construct a reservoir; or
8 change or transfer a water right, including seasonal and temporary
9 changes, the fee is one hundred dollars. The filing fee is due upon
10 submittal of the application to the department. The application will
11 not be considered complete, accepted for filing, or assigned a priority
12 date until the filing fee is paid in full.

13 (b) For the examination of an application for a permit to
14 appropriate water, the following fee schedule shall apply:

15 (i) For applications for a quantity greater than zero cubic feet
16 per second and less than or equal to one cubic foot per second, the fee
17 is one hundred forty dollars for each one-tenth cubic foot per second
18 or portion thereof, with a minimum fee of three hundred dollars.

19 (ii) For applications for a quantity greater than one cubic foot
20 per second and less than or equal to ten cubic feet per second, the fee
21 is the sum of the fee identified in (b)(i) of this subsection plus one
22 thousand dollars for each additional cubic foot per second or portion
23 thereof greater than one cubic foot per second.

24 (iii) For applications for a quantity greater than ten cubic feet
25 per second and less than or equal to one hundred cubic feet per second,
26 the fee is the sum of the fees identified in (b)(ii) of this subsection
27 plus five hundred dollars for each additional cubic foot per second or
28 portion thereof greater than ten cubic feet per second.

29 (iv) For applications for a quantity of more than one hundred cubic
30 feet per second, the fee is sixty thousand dollars.

31 (c) For examination of an application to construct a reservoir, the
32 fee is five hundred dollars or one dollar per acre-foot of capacity,
33 whichever is greater. The fee shall not exceed fifty thousand dollars.
34 "Reservoir" shall have the definition established in RCW 90.03.015.

35 (d) For examination of a permanent change or transfer, except for
36 a permanent change or transfer associated with a trust water right
37 acquired pursuant to chapter 90.38 or 90.42 RCW, the fee is one-fourth
38 of the examination fee required for a similar application for a new

1 water right. However, the fee shall not be less than one hundred
2 dollars nor more than two thousand dollars.

3 (e) For examination of a short-term water use as defined in RCW
4 90.03.015, a temporary or seasonal change or transfer, a drought
5 emergency permit or transfer, or a replacement well or replacement
6 point of diversion that the department determines does not involve a
7 significant change from the original water right, there is no
8 examination charge. The only applicable fee is the filing fee
9 identified in (a) of this subsection.

10 (f) For examination of a permanent or temporary change or transfer
11 associated with a trust water right acquired pursuant to chapter 90.38
12 or 90.42 RCW, there is no examination or permit/certificate fee. The
13 only applicable fee is the filing fee identified in (a) of this
14 subsection. The purpose of eliminating the examination fee for changes
15 or transfers associated with trust water rights is to provide an
16 incentive for the voluntary reallocation of water to meet existing and
17 future water needs.

18 (g) For examination of an application for an existing project or
19 change established without the required prior approval of the
20 department, the fee is the same examination fee as for a new
21 application plus twenty-five percent. Prior approval may include
22 possession of a valid water right claim, a permit or certificate to
23 appropriate public waters, or a temporary permit issued by the
24 department. The additional twenty-five percent fee is assessed to
25 discourage appropriation of water without the required prior approval
26 of the department.

27 (h) For the combined services of issuance of a permit to
28 appropriate water, monitoring project construction, and issuance of a
29 final certificate of water right, or for authorization and
30 certification of a change or transfer of a water right, the fee is one-
31 half of the examination fee for an equivalent quantity of water, with
32 a minimum fee of one hundred dollars.

33 (i) For granting each extension of time for beginning construction,
34 completing construction, or completing application of water to a
35 beneficial use, the fee is one hundred dollars.

36 (j) For recording an assignment of a permit or an application to
37 appropriate water, the fee is one hundred dollars for each assignee.

38 (k) For an application for a new water right or for a reservoir,
39 where the application was filed and accepted by the department prior to

1 January 1, 1993, the examination fees and permit/certificate fees are
2 one-half the amount indicated in (b), (c), and (h) of this subsection,
3 with a minimum fee of one hundred dollars.

4 (l) For the examination of plans and specifications as to the
5 safety of controlling works for storage of ten acre-feet or more of
6 water, the fee is the actual cost to the department for conducting the
7 examination, with a minimum fee of five hundred dollars. However, no
8 fee shall be assessed for examining plans and specifications to remove
9 an unsafe dam.

10 (m) For the inspection of controlling works for storage of ten
11 acre-feet or more of water for the purpose of ensuring safety to life
12 and property, the fee is the actual cost of inspection and related
13 expenses. However, no fee shall be assessed for periodic inspections
14 of federally licensed hydropower projects.

15 (n) For filing and recording a protest against granting any
16 application filed pursuant to this chapter or chapter 90.44 RCW, the
17 fee is one hundred dollars.

18 (o) If the owner so requests, the department may issue an amended
19 certificate of water right reflecting a change in ownership, for a fee
20 of fifty dollars. However, a new owner is not required to apply for
21 such a certificate if the new owner has purchased property with an
22 existing water right.

23 (p) For the 1993-95 fiscal biennium, any applicant proposing use of
24 one cubic foot per second or less regardless of whether the application
25 was filed before or after the effective date of this act, may petition
26 the department and provide evidence that the application is for a
27 nonconsumptive use of water as defined in RCW 90.03.015. If the
28 department confirms that the proposed use is nonconsumptive, the fee
29 for examining the application is twenty-five percent of the examination
30 fee for a similar amount of water, with a minimum fee of one hundred
31 dollars.

32 (2) The department shall provide timely notification by certified
33 mail with return receipt requested to applicants that fees are due. No
34 action may be taken until the fee is paid in full. Except as provided
35 in section 7 of this act, failure to remit fees within sixty days of
36 the department's notification shall be grounds for rejecting the
37 application or cancelling the permit. Cash shall not be accepted.
38 Fees must be paid by check or money order and are nonrefundable.

1 For purposes of calculating fees for ground water filings, one
2 cubic foot per second shall be regarded as equivalent to four hundred
3 fifty gallons per minute.

4 (3) The department shall provide each applicant with a report
5 regarding the status of that person's application no later than one
6 year following submittal of an application that is completed as
7 provided in RCW 90.03.260, 90.03.270, 90.03.380, 90.44.060, and
8 90.44.100. The department shall make a good faith effort to expedite
9 action on water rights applications.

10 **Sec. 5.** RCW 90.03.471 and 1987 c 109 s 99 are each amended to read
11 as follows:

12 ~~((All fees, collections and revenues derived under RCW 90.03.470 or~~
13 ~~by virtue of RCW 90.03.180, shall be used exclusively for the purpose~~
14 ~~of carrying out the work and performing the functions of the division~~
15 ~~of water resources of the department.)) The water rights fee account is
16 created in the state treasury. All fees collected under RCW 90.03.470
17 and pursuant to ground water applications under chapter 90.44 RCW shall
18 be deposited in this account. Expenditures from the account are
19 subject to legislative appropriation and may be used only for payment
20 for administration of the water rights and dam safety programs.~~

21 NEW SECTION. **Sec. 6.** (1) There is created a water rights fees
22 task force. The task force shall be comprised of twelve members, who
23 are appointed as follows:

24 (a) Two members of the Washington state house of representatives,
25 one from each major caucus, to be appointed by the speaker of the
26 house;

27 (b) Two members of the Washington state senate, one from each major
28 caucus, to be appointed by the president of the senate;

29 (c) Eight members, to be appointed jointly by the speaker of the
30 house of representatives and the president of the senate, to represent
31 the following interests: Agriculture, aquaculture, business, cities,
32 counties, environmentalists, state agencies dealing with water issues,
33 and water and other utilities. The task force may establish technical
34 advisory committees as necessary to complete its tasks.

35 (2) The task force shall conduct a comprehensive review of water
36 rights fees and related policy issues. The task force's tasks shall
37 include but not be limited to:

1 (a) Identification of the costs associated with the various types
2 of services provided and examination of how these costs compare with
3 the fees charged for these services;

4 (b) Identification of appropriate accountability measures for the
5 department to employ in administration of the water rights program.
6 Recommendations of accountability requirements and measurements shall
7 take into account the distinctive characteristics of the water rights
8 program, that is, that the department receives a large number of
9 applications on a one-time basis and that the department must meet its
10 legal obligations under the doctrine of prior appropriation.

11 (c) Identification of which program activities should be eligible
12 for cost recovery from fees, as well as which direct and indirect costs
13 of program administration;

14 (d) Review of the application, examination, and water rights permit
15 requirements for marine water users to determine if these users should
16 receive special consideration;

17 (e) Review of the definition and treatment of nonconsumptive water
18 uses to determine if and what special consideration should be given to
19 these users;

20 (f) Review of the fees and accounting methods for the dam safety
21 program; and

22 (g) Establishment of a reasonable time framework for completion of
23 new and pending water rights applications, and an analysis of the staff
24 and funding levels required to meet the established time framework.

25 (3) Before July 1, 1994, the task force shall:

26 (a) Provide recommendations to the department on ways to improve
27 the efficiency and accountability of the water rights program;

28 (b) Provide recommendations to the legislature on statutory changes
29 necessary to make these efficiency and accountability improvements; and

30 (c) Propose a new fee schedule for the water rights program which
31 incorporates the results of the task force's work and which funds at
32 least fifty percent of the cost of services being delivered through
33 fees.

34 (4) The department and the legislature shall jointly provide for
35 the staff support of the task force.

36 (5) The task force shall convene no later than August 1, 1993.
37 Task force members shall elect a chair and adopt rules for conducting
38 the business of the task force. The task force shall expire on
39 December 30, 1994.

1 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and shall take
4 effect immediately. This act applies retroactively to January 1, 1993.

5 The department shall notify, by certified mail with return receipt
6 requested, any person with a water right action pending before the
7 department if the fee for that action is increased by passage of this
8 legislation. The additional fees are payable within one hundred twenty
9 days of such notice. The department's notice shall include a statement
10 that any person wishing to continue an application or other request
11 shall, within ninety days of the notice, request in writing that the
12 department continue to proceed with the application or other request.
13 If no response is received within ninety days, the department shall
14 send a final notice by certified mail with return receipt requested.
15 The final notice shall provide an additional thirty days in which to
16 respond. Failure to respond within the time required in this section
17 will result in automatic cancellation of the application or other
18 request and forfeiture of the fees previously remitted. An application
19 or other request that is canceled under this section may be reinstated
20 upon the applicant's request if such request, together with any fees
21 owed, are received by the department within sixty days of the
22 notification of cancellation and if the applicant or requestor
23 demonstrates that extenuating circumstances prevented a timely response
24 to the department's notifications.

25 NEW SECTION. **Sec. 8.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

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