

HOUSE BILL REPORT

ESHB 1236

As Passed House
March 16, 1993

Title: An act relating to fees for certain water rights and related approvals.

Brief Description: Establishing fees for certain water rights.

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

Brief History:

Reported by House Committee on:
Natural Resources & Parks, March 3, 1993, DPS;
Revenue, March 8, 1993, DPS(NRP-A REV);
Passed House, March 16, 1993, 96-1.

HOUSE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Pruitt, Chair; R. Johnson, Vice Chair; Dunshee; Linville; Valle; and Wolfe.

Minority Report: Without recommendation. Signed by 5 members: Representatives Morton, Ranking Minority Member; Stevens, Assistant Ranking Minority Member; Schoesler; Sheldon; and Thomas.

Staff: Linda Byers (786-7129).

HOUSE COMMITTEE ON REVENUE

Majority Report: The substitute bill by Committee on Natural Resources & Parks be substituted therefor and the substitute bill as amended by Committee on Revenue do pass. Signed by 9 members: Representatives G. Fisher, Chair; Holm, Vice Chair; Anderson; Brown; Cothorn; Romero; Rust; Thibaudeau; and Wang.

Minority Report: Do not pass. Signed by 6 members: Representatives Foreman, Ranking Minority Member; Fuhrman,

Assistant Ranking Minority Member; Morris; Silver; Talcott; and Van Luven.

Staff: Keitlyn Watson (786-7310).

Background: Under the State Water Code, a person must have a water right for any use of surface water and for larger 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. The process of acquiring a water right involves a number of steps and the payment of several fees. These fees are established in statute.

The number of new water rights applications has increased over the last several years, from 800 new applications in 1985 to 1,835 applications in 1992. The average waiting period associated with processing an application has also increased, from one and one half years in 1985 to two and one half years in 1992. The department also reports an increase in application protests and appeals.

In the current biennium, the state will spend approximately \$7.3 million on water rights processing. Currently the fees generate \$100,000 per biennium, less than 2 percent of the costs of the program. The appropriation to fully fund the program comes from the general fund. The Current Law (Book I) budget proposes a cut to this program of \$1.7 million. The New Revenue (Book II) budget assumes passage of fee legislation generating \$5 million, to be used to restore and enhance the budget for the Water Rights Program.

Summary of Bill: The Legislature finds that a water right confers significant economic benefits to the water right holder, and that water rights applicants should contribute more to the cost of administration of the Water Rights Program. The Legislature also finds that water rights applicants have a right to know that the Water Rights Program is being administered efficiently and that the fees charged for various services relate to the cost of those services.

The Legislature creates a water rights fees task force and provides for the appointment of task force members. The task force is directed to conduct a comprehensive review of water rights fees. A number of specific tasks are to be included in this review. Before December 1, 1993, the task force is to (1) provide recommendations to the Department of Ecology on ways to improve the efficiency and accountability of the Water Rights Program; (2) provide recommendations to the Legislature on statutory changes necessary to make these efficiency and accountability improvements; and (3) propose

a new water rights fee schedule which incorporates the task force's work and which funds through fees 50 percent of the cost of the activities and services provided by the Water Rights Program.

The Legislature requests that, by July 1, 1993, the Department of Ecology begin the rule-making process to adopt state policies on instream flow levels and hydraulic continuity. If the department is unable to develop consensus on these policies, the department is to provide to the appropriate legislative committees information on these two issues, data and documentation on work to date on establishing policies on these issues, and policy options for consideration by the Legislature.

Fiscal Note: Available. New fiscal note requested on March 3, 1993.

Effective Date: The bill contains an emergency clause and is effective retroactively to January 1, 1993.

Testimony For: (Natural Resources & Parks): Fees for this program have not been increased since 1917. The rights are in perpetuity and confer a tremendous economic benefit to the right holder. The state is giving away water, which the state cannot afford to do. If this were oil, the state would be asking for 100 percent cost recovery, plus a royalty. The fee increase does not affect those who are currently holding water rights. If this bill does not pass, a moratorium on water rights is probable because of general fund cuts to the program. Data management is directly related to the administration of the program. The existing data management system is archaic and inefficient. The department has to be very careful in evaluating the availability of water, and this is often difficult to do. The proposed legislation keeps fees smaller for the smaller user, and charges larger fees for larger uses of water. There are special provisions for the applications in process. The department's workload has increased greatly, especially with a proliferation of small water systems and more groundwater applications. Streams and rivers are at or approaching full appropriation, and the department must be very careful that new uses do not impede on existing ones. There is very little general fund money available for programs this biennium. This program is being paid for almost entirely by taxpayers; it is time that water users started paying.

(Revenue): If the bill does not pass, a moratorium on water rights can be expected because general fund support for the program is unavailable. Users should pay for water rights rather than taxpayers. Fees generated will allow the

Department of Ecology to conduct data management and reduce its backlog of water rights applications. The Water Resources Program should be 100 percent fee supported.

Testimony Against: (Natural Resources & Parks): This is too great of an acceleration of fees. Farmers cannot pass on increased costs. Farm land will be removed from production. There can be several water rights on one farm. This will be cost-prohibitive for small fish-growing operations to get started. It is already difficult to get financing, and this increase will make it worse. The Department of Ecology needs to be more efficient. The department has too much discretion in making decisions, which interferes with orderly decision-making. There must be an effective mechanism to document good decision-making. The creeping progress of the Water Forum is holding up the department as well. It is okay to pay more fees, but not fees of this magnitude. The proposed fee schedule does not reflect actual costs. Protest fees should be higher. The fees should go into a dedicated account rather than into the general fund. The fees money should be subject to legislative appropriation. There should be more accountability and efficiency in the program. The process should be sped up and streamlined. Data management should not be paid for with fees. There should be a function-by-function review or audit of the program. New rates should be ramped up, not introduced all at once.

(Revenue): None. Concerns were expressed on substitute.

Witnesses: (Natural Resources & Parks): Rep. Nancy Rust, prime sponsor (pro); Marlyta Deck, Washington Cattlemen's Association (con); Dan Swecker, Washington Fish Growers Association (con); Jim Zimmerman, Troutlodge, Inc. (con); Bruce Wishart, Sierra Club (pro); Hedia Adelsman, Department of Ecology (pro); Bob Barnes, Puget Power (pro with reservations); Tom Mortimer, Northwest Hydro Association, Washington Water Utilities (con); Pat Wiles, Independently Owned Water Utilities Association/Harbor Water (con); Don Schluter, Northwest Rivers Council (pro); Richard Junk, Woodland Park Utility Association (con); Kris Backes, Association of Washington Business (con); Ken Merry, Tacoma City Water (con); Jeff Parsons, National Audubon Society (pro); Tom Casey, Grange (con); Bob Wubbena, Water Utilities Council (pro with concerns); Mike McCourt, Association of Washington Cities (pro with concerns); K. O. Rosenberg, Northeast Tri-Counties (con); Sandie Nelson, Water Forum (pro); Rick Nelson (con); and Bruce Briggs, Western Washington Farm Association (con).

(Revenue): Rep. Nancy Rust, prime sponsor (pro); Hedia Adelsman, Department of Ecology (pro); Bruce Wishart, Sierra

Club (pro with concerns about the reduced fees in the proposed substitute); and Kris Backes, Association of Washington Business (not opposed because the bill is still being negotiated, does not like substitute).