
SUBSTITUTE HOUSE BILL 1851

State of Washington 52nd Legislature 1991 Regular Session

By House Committee on Revenue (originally sponsored by Representatives Wang and Holland; by request of Department of Ecology and Office of Financial Management).

Read first time March 6, 1991.

1 AN ACT Relating to the department of ecology's fees and penalties
2 concerning water rights; amending RCW 90.03.471 and 90.03.600; adding
3 a new section to chapter 90.03 RCW; creating new sections; repealing
4 RCW 90.03.470; prescribing penalties; providing an effective date; and
5 declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8 (a) Significant economic value is conferred upon recipients of
9 water rights;

10 (b) Water rights are issued in perpetuity and confer benefits upon
11 the water right holder for as long as such rights are used for
12 beneficial purposes;

13 (c) Because of growth in the state, the department of ecology faces
14 a large increase in the number of water right applications;

1 (d) The fees charged for water right applications, permits,
2 certificates, and related services do not cover the administrative
3 costs of the water rights program and do not reflect the significant
4 economic value conferred upon the recipients of water rights;

5 (e) Violations of water resource laws, rules, and orders result in
6 damage to state water and to the holders of valid water rights; and

7 (f) The maximum civil penalties that can be levied for water rights
8 violations are insufficient to discourage such violations and are not
9 cost-effective for the state to impose.

10 (2) The purposes of this act are to:

11 (a) Establish fees for water rights and related services that
12 reflect the cost of administering the water resources program; and

13 (b) Increase the maximum civil penalties applicable to violations
14 of state water laws, rules, and orders.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.03 RCW
16 to read as follows:

17 (1) The department shall adopt rules, following the procedures of
18 chapter 34.05 RCW, establishing a schedule of fees for performing
19 certain functions of the water resources program. The department shall
20 collect in advance the applicable fee for each of the following
21 actions:

22 (a) Accepting and examining an application for a permit to
23 appropriate public water;

24 (b) Accepting and examining an application for change or transfer
25 of a water right;

26 (c) Examining and preparing for the issuance of a water right
27 permit or an authorization to change or transfer a water right;

28 (d) Preparing, filing, and recording certificates to appropriate
29 water or other water rights instruments;

1 (e) Copying any recorded document;

2 (f) Certifying any copies, documents, records, or maps;

3 (g) Granting an extension of time for any phase of the construction
4 schedule under an authorization to appropriate public water;

5 (h) Inspection of any hydraulic works to ensure safety to life and
6 property;

7 (i) Examination of plans and specifications of dams, reservoirs, or
8 other works for the storage of water;

9 (j) Recording of an assignment of either a permit to appropriate
10 water or of an application for such a permit;

11 (k) Filing and recording a protest against granting any
12 application; and

13 (1) Certification of adequate water supply under rules adopted by
14 the department as required by RCW 19.27.097.

15 (2) The fees established under this section shall be based on
16 recovering the actual cost to the department of taking the actions in
17 subsection (1) of this section. The department may classify water uses
18 by type, quantity, and complexity and may compute its average costs in
19 determining fees for applications, permits, and certificates of water
20 right for each classification. Fees shall be adjusted biennially to
21 match appropriations for the water resources program. Fees may not be
22 used to cover costs of enforcement of the water resources program.

23 (3) A surcharge of twenty-five percent shall be assessed on the
24 application and permit fees of applicants who have used public water
25 without the prior approval of the department. Prior approval includes
26 a valid water right claim, a permit to appropriate public waters, or a
27 temporary permit issued by the department.

28 (4) The fees established under this section shall apply to all
29 applications and requests for any pertinent actions pending before the
30 water resources program of the department at the time the rules

1 establishing the fees become effective under chapter 34.05 RCW:
2 PROVIDED, That no fees established under subsection (1) of this section
3 shall apply to any application that is completed as provided in RCW
4 90.03.260, 90.03.270, and 90.44.060 and is submitted to the department
5 before January 1, 1992. Any fee already paid for an application or
6 other pertinent requested action shall be credited to the amount owed
7 on the fees established by rule.

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

29 (6) The department shall convene and consult with a water right fee
30 committee to review proposed fees. The water right fee committee shall

1 consist of representatives from the department, appropriate state
2 agencies and local governments, and interested parties, including but
3 not limited to utilities, and agricultural, environmental, and business
4 interests.

5 (7) The department shall submit a report to the appropriate
6 committees of the legislature by November of each even-numbered year
7 showing detailed information on fees collected, actual expenses
8 incurred, anticipated expenses, and the actual costs of processing
9 representative water right applications for the current and next two
10 fiscal years.

11 (8) The department shall provide each applicant with a report
12 regarding the status of the applicant's permit no later than nine
13 months following submittal of an application that is completed as
14 provided in RCW 90.03.260, 90.03.270, and 90.44.060. The department
15 shall make a good faith effort to expedite requests made under this
16 section.

17 **Sec. 3.** RCW 90.03.471 and 1987 c 109 s 99 are each amended to read
18 as follows:

19 All fees, collections and revenues derived under RCW 90.03.470 (~~or~~
20 ~~by virtue of RCW 90.03.180~~) and section 2 of this act, shall be used
21 exclusively for the purpose of (~~carrying out the work and~~) performing
22 the functions of the division of water resources of the department.
23 Not more than eighteen percent of the fees collected under section 2 of
24 this act may be used to cover administrative overhead costs.

25 **Sec. 4.** RCW 90.03.600 and 1987 c 109 s 157 are each amended to
26 read as follows:

27 (~~The power is granted to the~~) To ensure protection of state
28 waters and related resources and to prevent impairment of water rights,

1 ~~the department ((of ecology to)) may levy civil penalties ((of up to~~
2 ~~one hundred dollars per day)) for violation of any of the provisions of~~
3 ~~this chapter and chapters 43.83B, 90.22, ((and)) 90.44, and 90.54 RCW,~~
4 ~~and rules, permits, ((and similar documents)) and regulatory orders of~~
5 ~~the department of ecology adopted or issued pursuant to such chapters.~~
6 ~~((The procedures of RCW 90.48.144 shall be applicable to all phases of~~
7 ~~the levying of a penalty as well as review and appeal of the same.))~~

8 The department shall adopt rules to determine penalties. The
9 department shall consider the seriousness of a violation, including the
10 threat to public health, damage or potential damage to public resources
11 or property, and the recurrence of violations.

12 (1) Penalties for minor violations shall be greater than one
13 hundred dollars, but shall not exceed five hundred dollars. Minor
14 violations are those violations that do not seriously threaten public
15 welfare, health, safety, public and private property, or the
16 environment, and include but are not limited to:

17 (a) Failure to comply with the quantity, purpose, place or time of
18 use, or acreage requirements of a water right permit, certificate, or
19 other water right conditions; and

20 (b) Failure to install required measuring devices and provide
21 information requested by the department as to quantity of use.

22 (2) Penalties for significant violations shall be greater than five
23 hundred dollars, but shall not exceed five thousand dollars.
24 Significant violations are those violations that seriously threaten
25 public welfare, health, safety, public and private property, or the
26 environment, and include but are not limited to:

27 (a) Construction of diversion, withdrawal, or storage works without
28 a permit from the department;

29 (b) Diversion, withdrawal, or use of water without a permit from
30 the department;

1 (c) Violation of an order of the department to cease diversion or
2 withdrawal to protect senior water rights or senior instream flows;

3 (d) Continuous or recurring violation of a departmental order or
4 notice of violation;

5 (e) Repeated or continuous minor violations; and

6 (f) Intentionally providing false or misleading information on an
7 application, proof of appropriation, or water use report.

8 (3) The procedures of RCW 90.48.144 shall be applicable to all
9 procedures related to the levying, review, and appeal of penalties.

10 NEW SECTION. Sec. 5. RCW 90.03.470 and 1987 c 109 s 98, 1965
11 ex.s. c 160 s 1, 1951 c 57 s 5, 1929 c 122 s 8, 1925 ex.s. c 161 s 2,
12 & 1917 c 117 s 44 are each repealed.

13 NEW SECTION. Sec. 6. This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and shall take
16 effect immediately, except for section 5 of this act which shall take
17 effect January 1, 1992.

18 NEW SECTION. Sec. 7. The fees established in RCW 90.03.470
19 shall be superseded by rules adopted by the department under section 2
20 of this act.

21 NEW SECTION. Sec. 8. This act shall not be construed as
22 affecting any existing right acquired or liability or obligation
23 incurred under the sections amended or repealed in this act or under
24 any rule or order adopted under those sections, nor as affecting any
25 proceeding instituted under those sections.