

HOUSE BILL REPORT

HB 1236

As Reported By House Committee On:
Natural Resources & Parks

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

Brief Description: Establishing fees for certain water rights.

Sponsors: 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.

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).

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. An applicant files an application with the Department of Ecology and pays an examination fee based on the amount of water involved in the project. The department must determine whether the proposed use of water meets four tests: (1) the proposed use of water is beneficial; (2) water is available; (3) the proposed use does not impair any existing water right; and (4) the use is

not detrimental to the public interest. Applications which do not meet all four of these tests may be denied or conditioned. Existing water right holders who believe their rights may be impaired by a new proposed use may file a protest with the department regarding the pending application.

After its examination, the department makes a formal report of examination with a recommendation to either accept, deny, or condition the water right application. If the applicant accepts the recommendation, the applicant indicates this acceptance and pays a permit fee. After receiving the permit fee, the department issues a permit to the applicant, 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 and proof of appropriation, and the department 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.

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 1.5 years in 1985 to 2.5 years in 1992. The department also reports an increase in application protests and appeals.

In 1990, the Legislature directed the department to develop a comprehensive water resource data program. The Legislature also mandated creation of a Water Resource Data Management Task Force. The task force has developed a set of recommendations and a five-year plan for organizing and managing water resource data.

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 Substitute 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 right applicants have a right to know that the Water Rights Program is being administered efficiently and that the fees charged for various services relate directly to the cost of providing those services. The Legislature then establishes interim fees for the 1993-95 biennium, and creates a task force to review the Water Rights Program, to make recommendations for increasing the overall efficiency and accountability of the administration of the program, and to return to the Legislature with a proposal for a new fee schedule with the fees related clearly to the cost of the services provided.

For the 1993-95 fiscal biennium, a new set of water rights fees is established in statute. A new \$100 filing fee is established. Examination and permit fees are increased; the separate certificate fee is eliminated. A surcharge is added to the examination fee for examination of an application for an existing project established without the required prior approval of the department. There are also increases in the fees for granting time extensions for projects and for filing protests.

A new provision in the bill addresses the special case of trust water rights. There are no examination or permit fees associated with application for a permanent or temporary change or transfer associated with a trust water right. The stated purpose of eliminating these fees is to provide an incentive for the voluntary reallocation of water to meet existing and future water needs. Also, no examination or permit fee is to be charged for short-term water uses -- newly defined in statute -- temporary or seasonal changes or transfers, a drought emergency permit or transfer, or a replacement well or replacement point of diversion that the department determines does not involve a significant change from the original water right.

A "nonconsumptive" water use is newly defined in statute. A special provision addresses applications proposing to use one cubic foot per second or less of water for a nonconsumptive use. The applicant may petition the department and provide evidence that the use is nonconsumptive. If the department confirms that the proposed use is nonconsumptive, the examination fee is reduced to 25 percent of the regular examination fee. The task force created in the legislation is directed to look at the appropriate definition and treatment of nonconsumptive water uses.

A water rights task force is created, and a means for appointment of its 12 members is established. The task force's tasks are to include but not be limited to (a)

identification of the costs associated with the services provided in the Water Rights Program and examination of how these costs compare with the fees charged for those services; (b) identification of appropriate accountability measures for the department to employ in administering the Water Rights Program; (c) identification of which program activities should be eligible for cost recovery from fees; (d) review of how marine waters are treated in the program; (e) review regarding the definition and treatment of nonconsumptive uses; (f) review of the fees and accounting for the dam safety program, and (g) establishment of a reasonable time framework for completion of new and pending water right applications, and an analysis of the staff and funding levels required to meet the established time frame.

Before July 1, 1994, the task force is to provide recommendations to the department on ways to improve efficiency and accountability and to the Legislature on any statutory changes necessary to make those improvements. The task force is also to propose a new fee schedule for the Water Rights Program which funds with fees at least 50 percent of the cost of the services provided by the program.

The water rights fee account is created in the state treasury. Fees collected as part of the Water Rights Program are to be deposited in the new account. Expenditures from the account are subject to legislative appropriation and may be used only for payment for administration of the Water Rights and Dam Safety programs.

The bill has an emergency clause and is effective retroactively to January 1, 1993. Pending applications as of that date receive a discount from the new fees as well as special notification of the impact of the new legislation.

Substitute Bill Compared to Original Bill: The Department of Ecology estimates that the fee schedule in the original bill would generate \$5 million for the biennium. The new fee schedule is estimated to generate \$3.6 million. The fees in the substitute bill are interim fees, only for the 1993-95 biennium. In general, the fees in the substitute bill are lower, with special provisions for trust water rights, short-term and other related uses, and nonconsumptive uses of one cubic foot per second or less. The substitute bill contains an intent section. It creates a task force and assigns specific duties and responsibilities to that task force. The substitute bill also creates a new dedicated account, subject to legislative appropriation.

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

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

Testimony For (Original Bill): 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.

Testimony Against (Original Bill): 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.

Witnesses: 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).