

HOUSE BILL REPORT

HB 2385

As Reported By House Committee On:
Natural Resources & Parks

Title: An act relating to water right permits.

Brief Description: Changing provisions relating to water right permits.

Sponsors: Representative Pruitt.

Brief History:

Reported by House Committee on:
Natural Resources & Parks, February 4, 1994, 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: Do not pass. Signed by 5 members: Representative Stevens, Ranking Minority Member; McMorris, Assistant Ranking Minority Member; Schoesler; Sheldon; B. Thomas.

Staff: Linda Byers (786-7129).

Background: In 1993, the Legislature created the Water Rights Fees Task Force and directed the task force to do the following: provide recommendations to the Department of Ecology on ways to improve the efficiency and accountability of its water rights program; provide recommendations to the Legislature on statutory changes necessary to make these improvements; and propose a new fee schedule for the water rights program in order to fund, through fees, 50 percent of the cost of the program. Many of the statutory changes recommended by the task force are incorporated into this legislation.

Summary of Substitute Bill:

Water Right Applications

The priority date of a water right is based on the date that a completed water right application is filed with the

Department of Ecology. The department is directed to adopt rules by January 1, 1995, which specify the required contents of a completed application form and the timelines the department is to follow in determining if an application is complete. The department is to encourage the filing of a single, consolidated application for large, complex projects, rather than the filing of many different applications for the same project.

The department is also to establish a register which identifies, by water resource inventory area, applications for larger new appropriations, transfers, and changes.

Processing of Water Right Applications

In investigating an application, the department may require an applicant to provide information necessary for the department's investigation, determinations, and findings. The information provided by the applicant shall satisfy the protocols established by the department for obtaining and providing information. The department may not require an applicant to provide information that is not necessary for the department's investigation of that application.

A definition of "good cause" is added to statute with regard to an applicant's receiving an extension of time on a construction schedule.

Alternative, more streamlined procedures are established for processing applications for certain water uses. These uses include small appropriations of water from a reservation of water established by rule, short-term water uses, use of marine waters on upland sites, and nonconsumptive uses of water.

Water Right Transfers and Changes

New kinds of transfers and changes are authorized, such as changing the season of use of water for certain related uses and changing from ground to surface water or vice versa if the two sources are in direct hydraulic continuity. In evaluating changes and transfers, the department is to consider impacts to fish habitat and senior water right holders. The department also establishes a new procedure with regard to proposed transfers and changes whereby the department is better able to keep track of whether a proposed change or transfer actually takes place.

Protests and Appeals

A 30-day protest period is established in statute. In order to be considered by the department, a protest must be received by

the department within 30 days of the last date of publication of the required public notice.

In bringing appeals of water right permit decisions before the Pollution Control Hearings Board (PCHB), the burden of proof is on the person bringing the appeal. The board may recommend mediation in these cases. A new appeal to the board is established regarding the nature and extent of information being required by the Department of Ecology for investigation of a water right application.

Accountability

The Department of Ecology is to develop a budget process for the water rights program which includes identification of targets for permitting activities and workload standards for the program. The department is to report annually on various accountability measures. The Legislature is to provide for periodic performance audits of the program.

Water Rights Fees

The fee schedules recommended by the task force are placed into statute. Higher fees are in place for the period July 1, 1994, through June 30, 1997, with the additional revenue targeted to data management development and reduction of the permit backlog. Beginning July 1, 1997, a lower base fee schedule takes the place of the temporary fee schedule in statute. A one-time registration fee is established for new exempt wells. Fees are established for the new categories of permits created in the bill, such as general permits. A special fee discount is provided for transfers of waters into the trust water right program. The task force's recommended fees, in combination with an assumed set of cost-savings from efficiency measures adopted by the department, are projected to fund 50 percent of the cost of the water rights program.

Substitute Bill Compared to Original Bill: The substitute bill provides for express protection for fish habitat in addition to protection for senior water right holders for the new, expedited permit processes and for changes and transfers. It also provides for additional notice to affected Federally-recognized Indian tribes and the Department of Fish and Wildlife. The original bill required a good faith effort at mediation prior to a hearing before the PCHB; the substitute bill allows the PCHB to recommend mediation. The substitute bill incorporates the exempt well fee, the fees for new categories of uses, and the fee discount for trust water transfers into the two fee schedules. The substitute bill removes a Department of Ecology restriction on inspecting federally-licensed dams.

Fiscal Note: Not available. Available on original bill.

Effective Date of Substitute Bill: This bill contains an emergency clause and takes effect immediately. Section 1 shall take effect January 2, 1995. Section 25 shall take effect July 1, 1997.

Testimony For: The task force worked hard and identified efficiencies and ways to streamline. The 50/50 funding split is good but should be put into statute. The restriction on the department's inspection of federal dams avoids regulatory overlap and possible conflicts. The support for funding for data management is a big step forward for the state. The \$75 exempt well fee is a relatively small amount to pay for the privilege of using the public resource and having the protection from impairment like certificate holders. The new general permits will be helpful for fish growers. The restriction on the change in season of use is very important in some areas.

Testimony Against: Restricting the use of the change in season of use will conflict with some regional planning efforts. The restriction on the department's inspection of dams is a public safety issue, not an efficiency issue. An escalating fee schedule based on volume of water is discriminatory; a flat fee would be preferable. The department and the PCHB should not have any additional power. The bill does not provide adequate protection for fish and instream flows or adequate notice for tribes and the Department of Fish and Wildlife. These water rights are valuable; applicants should pay for 100 percent of the program plus monitoring and enforcement. The quality of private contractors and agency protocols raises concerns. Municipal utilities have concerns with their treatment in the sections on changes and transfers. The exempt well fee is unfair and redundant; some people have no other option but to sink a well.

Witnesses: Linda Crerar and Hedia Adelsman, Department of Ecology; Bob Barnes, Puget Power; Barbara Serr, Tacoma Public Utilities; Dave Ducharme, Northwest Hydroelectric Association; Mike Alberg; Dawn Vyvyan, Yakima Tribe and Skagit System Cooperative; Bruce Wishart, Sierra Club; Tom Mortimer, Washington Water Utilities Council; Judy Turpin, Washington Environmental Council; Pat Sumption, Friends of the Green; Joe LaTourrette, Washington Wildlife Federation and Rivers Council of Washington; Rick DeRemer, Washington State Drilling & Ground Water Association; John Woodring, Washington Association of Realtors; David Monthie, Department of Health; Mike Schwisow, Washington State Water Resources Association; Kathleen Collins, Association of Washington Cities; Gale Rettkowski; Tom Frick, Washington Association of Wheat

Growers; Kent Lebsack, Cattlemens Association; and Judge William Harrison, Environmental Hearings Office.