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**SUBSTITUTE SENATE BILL 5911**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senate Committee on Environment, Energy & Water (originally sponsored by Senator Fraser)

READ FIRST TIME 03/05/01.

1 AN ACT Relating to functions and certification of certified water  
2 rights examiners; adding a new section to chapter 90.03 RCW; and  
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature intends to expedite the  
6 issuance of final water right certificates, superseding certificates,  
7 or certificates of change by providing for certification of individuals  
8 qualified to assist those who hold permits for development of water  
9 rights and those who have approval for change or transfer of existing  
10 water rights to complete the necessary proof of examination.

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

13 (1) By June 30, 2002, the department must adopt rules to establish  
14 certification procedures, qualifications, and fees for certified water  
15 rights examiners, and any other requirements not established by law for  
16 fulfilling the functions of certified water rights examiners.

17 (2) Certified water rights examiners must be certified by the  
18 department to perform the following functions:

1 (a) To carry out the proof examination of a permitted water right  
2 development as a prerequisite to the issuance of a final water right  
3 certificate. The examiner must provide a report and detailed map to  
4 the department as to that examination; and

5 (b) To carry out the proof examination for a change or transfer of  
6 an existing water right or water right claim and to provide a report  
7 and detailed map to the department as to that examination as a  
8 prerequisite to the issuance of a superseding certificate or  
9 certificate of change.

10 (3) The department must develop and administer a written  
11 examination for purposes of certifying water rights examiners. An  
12 examination fee in an amount established by the department's rule  
13 required by subsection (1) of this section must be paid in advance of  
14 testing. The certification is valid for one year, renewable upon  
15 payment of a renewal fee prior to the expiration of the one-year  
16 period. Examiners in good standing are not required to retest to  
17 receive a certification renewal. Former examiners whose certifications  
18 have lapsed for more than one year are required to retake the  
19 examination to be recertified. The department's denial of  
20 certification or a renewal may be appealed to the pollution control  
21 hearings board under RCW 43.21B.230.

22 (4) The department shall establish and from time to time update by  
23 rule the amount of fees charged for the examination, certification,  
24 certificate renewal, and training of water right examiners. The  
25 department shall set the fees at a sufficient level to defray all costs  
26 of administering the program to license and regulate water right  
27 examiners. Fees collected under this section shall be credited by the  
28 state treasurer to the state reclamation revolving account established  
29 in RCW 89.16.020. The fees must be allocated and expended by the  
30 director for the administration of the licensed water rights examiner  
31 program.

32 (5) The department may issue an order suspending or revoking the  
33 certificate of any certified water right examiner for good cause,  
34 including illegal acts, misrepresentation of the facts associated with  
35 a proof examination and report, or gross incompetence. The  
36 department's order may be appealed to the pollution control hearings  
37 board under RCW 43.21B.230.

38 (6) The department must keep a record of any complaints it receives  
39 or irregularities it observes regarding individual certified water

1 rights examiners. The department must inform the examiner if a  
2 complaint is received or an irregularity is observed and permit the  
3 examiner to provide a written explanation to the department. The  
4 records must be made available to any person who requests them. The  
5 department must investigate complaints that allege or irregularities  
6 that indicate a breach of law.

7 (7) Each examiner may set his or her own fees for services offered.

8 (8) The department must retain a list of all active certified water  
9 rights examiners and the geographic areas of the state in which each  
10 has indicated a willingness to work. The list must be provided to any  
11 person who requests it and must be posted electronically by the  
12 department.

13 (9) The department must provide at least one day of continuing  
14 education training per year for water rights examiners. Examiners are  
15 required to attend the department's training session or attend an  
16 alternative training opportunity of at least one day's duration  
17 provided by a third party and approved by the department. The  
18 department must provide timely information to licensed examiners  
19 regarding changes in water resource laws, rules, policies, court  
20 decisions, and procedures.

21 (10) Proof examinations, opinions, or other actions taken by  
22 certified water rights examiners are not binding on the department, nor  
23 are they prima facie evidence in any legal proceeding.

24 (11) The department and officers or employees of the department may  
25 not be found liable for damages alleged to have arisen from the actions  
26 or inactions of the department, its officers, or employees under this  
27 section.

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