

---

SENATE BILL 5911

---

State of Washington

57th Legislature

2001 Regular Session

By Senator Fraser

Read first time 02/07/2001. Referred to Committee on Environment,  
Energy & Water.

1 AN ACT Relating to functions and certification of certified water  
2 rights examiners; amending RCW 90.03.330; and adding a new section to  
3 chapter 90.03 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW  
6 to read as follows:

7 (1) By June 30, 2002, the department must adopt rules to establish  
8 certification procedures, qualifications, fees, and other requirements  
9 for certified water rights examiners.

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

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

16 (b) To carry out the proof examination for a change or transfer of  
17 an existing water right or water right claim and to provide a report  
18 and detailed map to the department as to that examination as a

1 prerequisite to the issuance of a superseding certificate or  
2 certificate of change;

3 (c) To provide advice and assistance or to act as an agent for a  
4 person applying or considering whether to apply for a new water right  
5 or for a water right change or transfer; and

6 (d) To evaluate water rights and provide an opinion to a person  
7 seeking such an opinion as to the validity and quantification of an  
8 existing water right. The opinion is not subject to disclosure under  
9 chapter 42.17 RCW, nor may the department request a copy of the  
10 opinion.

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

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

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

1 (6) The department must keep a record of any complaints it receives  
2 or irregularities it observes regarding individual certified water  
3 rights examiners. The department must inform the examiner if a  
4 complaint is received or an irregularity is observed and permit the  
5 examiner to provide a written explanation to the department. The  
6 records must be made available to any person who requests them. The  
7 department must investigate complaints that allege or irregularities  
8 that indicate a breach of law.

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

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

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

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

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

30 **Sec. 2.** RCW 90.03.330 and 1987 c 109 s 89 are each amended to read  
31 as follows:

32 (1) After a permit holder has completed the project as provided in  
33 the permit and has put water to beneficial use, the permit holder must  
34 submit to the department a statement to that effect. The statement  
35 must be made on a form provided by the department and signed before a  
36 notary public.

37 (2) The department must review the following information before it  
38 issues a water right certificate under this section:

1 (a) A description and the location of any constructed works and  
2 other equipment or methods used for acquiring, storing, conveying, and  
3 making beneficial use of water, including the sizes and capacities of  
4 the facilities;

5 (b) An accurate and legible site map suitable for permanent  
6 recordkeeping that illustrates the location of facilities and the lands  
7 upon which water has been beneficially used;

8 (c) Photographs of major facilities and photographic evidence of  
9 beneficial use;

10 (d) The source or sources from which water is withdrawn or  
11 diverted;

12 (e) The beneficial uses of water that are served by the works;

13 (f) The date water was first beneficially used under the permit;

14 (g) The maximum instantaneous and annual quantity of water that has  
15 been put to beneficial use based on measurements of flow through the  
16 system during operation;

17 (h) A legal description of the lands on which water has been  
18 beneficially used;

19 (i) For irrigation, the acreage that has been irrigated, the crops  
20 grown, and the type of irrigation system employed;

21 (j) For domestic or municipal water supply, the number and type of  
22 housing units, businesses, or other end uses that have received and  
23 beneficially used water from the system;

24 (k) For hydroelectric power, the head, the maximum flow used during  
25 generation, the capacity of turbines, and the maximum electrical  
26 output;

27 (l) Evidence that the conditions of the permit have been complied  
28 with including, but not limited to, the proper installation and  
29 operation of any required measuring devices, fish screens, well  
30 inspection ports, well identification tags, and well surface seals; and

31 (m) Any other information the department determines is necessary to  
32 confirm that the permit holder has completed the project and has put  
33 water to beneficial use.

34 (3) The permit holder may choose at his or her expense to use a  
35 water rights examiner, certified by the department under section 1 of  
36 this act, to conduct the proof examination in subsection (2) of this  
37 section. If the person elects to use a certified water rights  
38 examiner, the examiner must prepare a report of the proof examination  
39 and submit it to the department. The first page of the report and the

1 first page of any attachments to the report, including any map or maps,  
2 must have the written certification and signature of the water rights  
3 examiner and the permit holder attesting to the truth and accuracy of  
4 the contents. The form of the written certification must be specified  
5 by the department.

6 (4) Upon a showing satisfactory to the department that any  
7 appropriation or change of water right has been perfected in accordance  
8 with the provisions of this chapter, it shall be the duty of the  
9 department to issue to the applicant a certificate stating such facts  
10 in a form to be prescribed by ((him)) the department, and such  
11 certificate shall thereupon be recorded with the department. Any  
12 original water right certificate issued, as provided by this chapter,  
13 shall be recorded with the department and thereafter, at the expense of  
14 the party receiving the same, be transmitted by the department  
15 ((~~transmitted~~)) to the county auditor of the county or counties where  
16 the distributing system or any part thereof is located, and be recorded  
17 in the office of such county auditor, and thereafter be transmitted to  
18 the owner thereof.

19 (5) The department shall make its decision whether to issue a  
20 certificate within one hundred twenty days of receiving the report of  
21 a certified water rights examiner provided to the department under this  
22 section.

--- END ---