

SENATE BILL REPORT

ESHB 2309

As of April 23, 2005

Title: An act relating to water right fees.

Brief Description: Modifying water right fees.

Sponsors: Representative Linville; by request of Office of Financial Management.

Brief History:

Committee Activity:

Staff: Richard Rodger (786-7461)

Background: Under the state Water Code, a person must have a water right for any use of surface water and for all but certain exempted 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 (DOE).

The process of acquiring a water right involves a number of steps and the payment of several fees. These fees are established in statute and must be used exclusively for the purpose of carrying out the work and performing the functions of the DOE's division of water resources. An applicant files an application with DOE and pays a minimum examination fee of \$10 based on the amount of water involved in the project.

After its examination, the DOE makes a formal report of examination with a recommendation to either accept, deny, or condition the water right application. If a permit is to be issued, the applicant must pay a \$5 permit fee. The DOE then issues a permit, 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 of \$5 and proof of appropriation, and the DOE 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.

Fees were originally set in 1917 and have been subsequently adjusted over the years. The majority of the fees were last adjusted in 1951, when the minimum examination fee was increased from the 1917 fee of \$5 to the current fee of \$10. Other fees were adjusted in 1965 and 1987, and some fees were changed in 1993 on a temporary basis .

Summary of Bill: Statutory fees related to acquiring a water right or storing water, and the basis for calculation of these fees, are amended. Fees for applications to appropriate or store water are assessed at the rate of \$1 per one hundredth cubic foot per second (cfs) and \$2 per acre foot of storage respectively. The minimum fees for applications to appropriate or store water are \$50, and the maximum fee for these types of applications is \$25,000.

Fees for applications to transfer, change, or amend a water right certificate, permit, or claim (and their calculation bases) also are amended. These fees are assessed at the rate of 50 cents

per one hundredth cfs of water involved in the change, transfer, or amendment. Fees for applications to change a storage water right are assessed at the rate of \$1 for each acre foot of water involved in the change. The minimum fee for these types of applications is \$50, and the maximum fee is \$12,500. The fee for a temporary or seasonal change is \$50.

Other water right-related fees are amended. Fees for applications to extend time for beginning construction work or for completing application of water to beneficial use is changed to \$50. This \$50 fee also applies to extensions of time requested under a change or transfer authorization. Fees for recording assignments, preparing and issuing water rights certificates, amending a water right claim, and filing formal protests against granting an application are changed to \$50. No fee is required to comment on a water right application.

Fee exemptions are specified. No fee is required for: Changes related to donation of a trust water right to the state; changes associated with the DOE's acquisition of a trust water right for instream flows or other public purposes; changes for which applications are filed with a water conservancy board or the DOE's review of a water conservancy board's record of decision; acquisition, storage, or change actions associated with parties to a cost reimbursement agreement; and emergency withdrawal authorizations or temporary drought-related water right changes received while a drought condition order is in effect.

Other provisions related to imposition of fees are added or removed. Only one examination fee and one certificate fee are imposed on change, transfer, or amendment applications involving a single project operating under more than water right or involving the consolidation or multiple water rights. Statutory fees in the water code for filing and recording a permit or other water rights instruments and for copying and certifying specified documents are removed.

Application process provisions are amended. The number of times the DOE collects fees during the water right application process is reduced from three to two. In addition, an application or request for action related to a water right is deemed incomplete unless at least the minimum specified fee is submitted with the application. The DOE must return any application or request that does not include at least the minimum specified fee with advice as the fee required for submission of the application. The minimum fee is considered a credit to the total fee due, and the DOE must provide notice to the applicant within five working days regarding any additional fees that must be submitted.

Disposition of the water right-related fees collected by the DOE is specified. 80 percent of the fees are to be deposited in the state general fund. The remaining 20 percent are to be deposited in the Water Rights Tracking System Account (Tracking System Account), which is established in the State Treasury. Fees from the Tracking System Account may be spent only after appropriation and may be used by the DOE for the development, implementation, and management of a water rights tracking system, including a mapping system and a data base.

Numerous technical revisions are included.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.