

ESSB 6402 - H AMD TO H AMD (H-5517.1/10) **1378**
By Representative Morris

NOT CONSIDERED 03/11/2010

1 On page 5, after line 25 of the amendment, insert the following:

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

4 The water rights processing and dam safety account is created in
5 the state treasury. All receipts from the fees collected under RCW
6 90.03.470 must be deposited into the account. Moneys in the account
7 may be spent only after appropriation. Expenditures from the account
8 may be used only to support the processing of water right applications
9 and change applications as provided in this chapter and chapters 90.38,
10 90.42, and 90.44 RCW and the safety inspection of hydraulic works and
11 plans and specifications for such works.

12 **Sec. 3.** RCW 90.03.470 and 2005 c 412 s 2 are each amended to read
13 as follows:

14 The fees specified in this section shall be collected by the
15 department in advance of the requested action.

16 (1) (~~For the examination of an application for a permit to~~
17 ~~appropriate water, a minimum fee of fifty dollars must be remitted with~~
18 ~~the application.~~

19 ~~For an amount of water exceeding one-half cubic foot per second,~~
20 ~~the examination fee shall be assessed at the rate of one dollar per one~~
21 ~~hundredth cubic foot per second. In no case will the examination fee~~
22 ~~be less than fifty dollars or more than twenty-five thousand dollars.~~
23 ~~No fee is required under this subsection (1) for an application filed~~
24 ~~by a party to a cost reimbursement agreement made under RCW~~
25 ~~90.03.265.)) For the examination of an application for a permit to
26 appropriate water or for an application to change, transfer, or amend
27 an existing water right, an examination fee equal to thirty-five
28 dollars for each one-hundredth of a cubic foot per second must be~~

1 remitted with the application, but in no case may the examination fee
2 be less than one thousand dollars or more than thirty-five thousand
3 dollars.

4 (2) The following fees apply for the examination of an application
5 to store water(, a fee of two dollars for each acre foot of storage
6 proposed shall be charged, but a minimum fee of fifty dollars must be
7 remitted with the application. In no case will the examination fee for
8 a storage project be less than fifty dollars or more than twenty-five
9 thousand dollars. No fee is required under this subsection (2) for an
10 application filed by a party to a cost reimbursement agreement made
11 under RCW 90.03.265)) and for an application to change a storage right:

12 (a) For storage of less than one hundred acre feet of water, an
13 examination fee of one thousand dollars must be remitted with the
14 application.

15 (b) For storage of more than one hundred acre feet of water but
16 less than or equal to one thousand acre feet of water, an examination
17 fee of two thousand dollars must be remitted with the application.

18 (c) For storage of more than one thousand acre feet of water but
19 less than or equal to ten thousand acre feet of water, an examination
20 fee of seven thousand five hundred dollars must be remitted with the
21 application.

22 (d) For storage of more than ten thousand acre feet of water, an
23 examination fee of fifteen thousand dollars must be remitted with the
24 application.

25 (3)(a) ~~((For the examination of an application to transfer, change,~~
26 ~~or amend a water right certificate, permit, or claim as authorized by~~
27 ~~RCW 90.44.100, 90.44.105, or 90.03.380, a minimum fee of fifty dollars~~
28 ~~must be remitted with the application. For an application for change~~
29 ~~involving an amount of water exceeding one cubic foot per second, the~~
30 ~~total examination fee shall be assessed at the rate of fifty cents per~~
31 ~~one hundredth cubic foot per second. For an application for change of~~
32 ~~a storage water right, the total examination fee shall be assessed at~~
33 ~~the rate of one dollar for each acre foot of water involved in the~~
34 ~~change. The fee shall be based on the amount of water subject to~~
35 ~~change as proposed in the application, not on the total amount of water~~
36 ~~reflected in the water right certificate, permit, or claim. In no case~~
37 ~~will the examination fee charged for a change application be less than~~
38 ~~fifty dollars or more than twelve thousand five hundred dollars.~~

1 ~~(b)~~) The fee paid to the department for an application for change
2 filed with a water conservancy board under chapter 90.80 RCW or for an
3 application for change filed by a party to a cost-reimbursement
4 agreement under RCW 90.03.265 must be one-fifth of the amounts provided
5 in subsections (1) and (2) of this section. A conservancy board may
6 charge its own processing fees in accordance with RCW 90.80.060.

7 **(b)** The examination fee for a temporary or seasonal change under
8 RCW 90.03.390 is ~~((fifty))~~ two hundred dollars and must be remitted
9 with the application.

10 (c) No fee is required under this subsection (3) for:

11 (i) An application to process a change relating to donation of a
12 trust water right to the state; or

13 (ii) An application to process a change when the department
14 otherwise acquires a trust water right for purposes of improving
15 instream flows or for other public purposes(~~(+~~

16 ~~(iii) An application filed with a water conservancy board according~~
17 ~~to chapter 90.80 RCW or for the review of a water conservancy board's~~
18 ~~record of decision submitted to the department according to chapter~~
19 ~~90.80 RCW; or~~

20 ~~(iv) An application filed by a party to a cost reimbursement~~
21 ~~agreement made under RCW 90.03.265)).~~

22 (d) For a change, transfer, or amendment involving a single project
23 operating under more than one water right, including related secondary
24 diversion rights, or involving the consolidation of multiple water
25 rights, only one examination fee and one certificate fee are required
26 to be paid.

27 ~~(4) ((The fifty-dollar minimum fee payable with the application~~
28 ~~shall be a credit to the total amount whenever the examination fee~~
29 ~~totals more than fifty dollars under the schedule specified in~~
30 ~~subsections (1) through (3) of this section and in such case the~~
31 ~~further fee due shall be the total computed amount, less the amount~~
32 ~~previously paid. Within five working days from receipt of an~~
33 ~~application, the department shall notify the applicant by registered~~
34 ~~mail of any additional fees due under subsections (1) through (3) of~~
35 ~~this section.))~~

36 (a) The fee amounts specified in this section apply to
37 applications received after the effective date of this section and to
38 all applications that have not been acted on by the department by
issuance of a report of examination as of the effective date of this

1 section. For pending applications that were filed prior to the
2 effective date of this section, any fees that were paid under a
3 previous fee schedule must be credited to the amounts required by
4 subsections (1), (2), and (3) of this section. When the department is
5 prepared to take action on an application that was filed prior to the
6 effective date of this section, the department shall notify the
7 applicant that additional fees are due and give the applicant sixty
8 days to remit the additional fees. If the applicant fails to remit the
9 additional fees within the time provided, the department shall cancel
10 the application and inform the applicant of the cancellation.

11 (b) If the department receives a water right, change, transfer,
12 amendment, or storage application that does not include remittance of
13 the fee amounts required by this section, the department shall return
14 the application to the applicant with instructions on the proper fee
15 amount to be remitted. An application does not establish a priority
16 date until the proper fee is remitted.

17 ~~(5) The ((fees specified in subsections (1) through (3) of this~~
18 ~~section do not apply to any filings)) fee for filing an emergency
19 withdrawal authorization(~~s~~) or temporary drought-related water right
20 change(~~s~~) authorized under RCW 43.83B.410 that ((are)) is received by
21 the department while a drought condition order issued under RCW
22 43.83B.405 is in effect is one hundred dollars.~~

23 (6) For applying for each extension of time for beginning
24 construction work under a permit to appropriate water, for completion
25 of construction work, or for completing application of water to a
26 beneficial use, a fee of two hundred fifty dollars is required. These
27 fees also apply to similar extensions of time requested under a change
28 or transfer authorization.

29 (7) For the inspection of any hydraulic works to ((insure)) ensure
30 safety to life and property, a fee based on the actual cost of the
31 inspection, including the expense incident thereto, is required
32 ((except as follows: (a) For any hydraulic works less than ten years
33 old, that the department examined and approved the construction plans
34 and specifications as to its safety when required under RCW 90.03.350,
35 there shall be no fee charged; or (b) for any hydraulic works more than
36 ten years old, but less than twenty years old, that the department
37 examined and approved the construction plans and specifications as to

1 ~~its safety when required under RCW 90.03.350, the fee charged shall not~~
2 ~~exceed the fee for a significant hazard dam)).~~

3 (8) For the examination of plans and specifications as to safety of
4 controlling works for storage of ten acre feet or more of water, a
5 minimum fee of (~~ten~~) five hundred dollars, or a fee equal to the
6 actual cost, is required.

7 (9) For recording an assignment either of a permit to appropriate
8 water or of an application for such a permit, a fee of (~~fifty~~) two
9 hundred dollars is required.

10 (10) For preparing and issuing all water right certificates, a fee
11 of (~~fifty~~) two hundred dollars is required.

12 (11) For filing and recording a formal protest against granting any
13 application, a fee of fifty dollars is required. No fee is required to
14 submit a comment, by mail or otherwise, regarding an application.

15 (12) For filing an application to amend a water right claim filed
16 under chapter 90.14 RCW, a fee of (~~fifty~~) two hundred dollars is
17 required.

18 (13) For the registration of a new permit exempt groundwater
19 withdrawal as required by RCW 90.44.050, a fee of three hundred dollars
20 must be remitted.

21 (14)(a) Each person who holds a water right permit application, a
22 reservoir permit application, or a change, transfer, or amendment
23 application that is pending at any time between the effective date of
24 this section and June 30, 2011, must remit a one-time fee of two
25 hundred dollars to the department to retain an application in good
26 standing. The department shall provide written notice by certified
27 mail to each holder of an application for the fees that are due under
28 this section. The notice must require that the fees be paid within
29 sixty days of the date of receipt, but in no case may payment be due
30 later than June 30, 2011. For ease of administration, the department
31 may distribute the issuance of the notices by geographic area. The
32 surcharge paid under this subsection is a credit against the
33 application fees required in this section.

34 (b) Applications not in good standing must be canceled. The
35 department shall issue an order to any holder of an application who
36 fails to pay the fee within the prescribed time. The order must state
37 that the application is canceled unless payment is received within
38 thirty days.

1 (c) The department shall advise an applicant and provide an
2 opportunity for an applicant to withdraw their application without
3 further payment of fees if the department determines that the
4 application would not likely be approved. The department shall
5 summarize the basis for its conclusion to the applicant. The
6 department shall further advise that the applicant has the option of
7 providing an amended application that could include storage or other
8 resource management technique that might make it approvable under RCW
9 90.03.255 or 90.44.055. The department's advice is not subject to
10 appeal. If the applicant decides to retain the application on file and
11 pays the fee required in this subsection, the department shall maintain
12 the application in good standing until it is able to render a final
13 decision on the application. The final decision is subject to appeal
14 to the pollution control hearings board as provided under chapter
15 43.21B RCW.

16 (15) An application or request for an action as provided for under
17 this section is incomplete unless accompanied by the fee or the minimum
18 fee. If no fee or an amount less than the minimum fee accompanies an
19 application or other request for an action as provided under this
20 section, the department shall return the application or request to the
21 applicant with advice as to the fee that must be remitted with the
22 application or request for it to be accepted for processing. If
23 additional fees are due, the department shall provide timely
24 notification by certified mail with return receipt requested to the
25 applicant. No action may be taken by the department until the fee is
26 paid in full. Failure to remit fees within sixty days of the
27 department's notification is grounds for rejecting the application or
28 request or canceling the permit. Cash shall not be accepted. Fees
29 must be paid by check or money order and are nonrefundable.

30 ~~((14))~~ (16) For purposes of calculating fees for groundwater
31 filings, one cubic foot per second shall be regarded as equivalent to
32 four hundred fifty gallons per minute.

33 ~~((15) Eighty percent of the fees collected by the department under~~
34 ~~this section shall be deposited in the state general fund. Twenty~~
35 ~~percent of the fees collected by the department under this section~~
36 ~~shall be deposited in the water rights tracking system account~~
37 ~~established in RCW 90.14.240.~~

1 ~~(16) Except for the fees relating to the inspection of hydraulic~~
2 ~~works and the examination of plans and specifications of controlling~~
3 ~~works provided for in subsections (7) and (8) of this section, nothing~~
4 ~~in this section is intended to grant authority to the department to~~
5 ~~amend the fees in this section by adoption of rules or otherwise.)~~

6 (17) The fees collected by the department under this section must be
7 deposited in the water rights processing and dam safety account created
8 in section 2 of this act.

9 (18)(a) The fees specified in this section are effective until the
10 department adopts rules that modify them in accordance with section 5
11 of this act, except that the fees required in subsections (7) and (8)
12 of this section may be modified at any time.

13 (b) When information has been previously obtained that directly
14 relates to the processing of an application in subsections (1) and (2)
15 of this section, the department must proportionately reduce the fees
16 associated with that application as a result of the reduced workload of
17 the department.

18 NEW SECTION. Sec. 4. A new section is added to chapter 90.03 RCW
19 to read as follows:

20 (1) The department must establish by rule a program for the
21 distribution of hardship grant money to assist applicants in the
22 payment of fees required in RCW 90.03.470.

23 (2) The department shall submit the list of hardship applicants
24 that meet the qualifications established by the department in this
25 section along with the applicant's requested grant amount to the office
26 of financial management for consideration in the governor's budget
27 request.

28 (3) The department shall also provide the list of hardship
29 applicants that meet the qualifications established by the department
30 in this section along with the applicant's requested grant amount to
31 the legislature by October 1st of each year.

32 **Sec. 5.** RCW 90.44.050 and 2003 c 307 s 1 are each amended to read
33 as follows:

34 (1) After June 6, 1945, no withdrawal of public groundwaters of the
35 state shall be begun, nor shall any well or other works for such
36 withdrawal be constructed, unless an application to appropriate such

1 waters has been made to the department and a permit has been granted by
2 it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public
3 groundwaters for stock-watering purposes, or for the watering of a lawn
4 or of a noncommercial garden not exceeding one-half acre in area, or
5 for single or group domestic uses in an amount not exceeding five
6 thousand gallons a day, or as provided in RCW 90.44.052, or for an
7 industrial purpose in an amount not exceeding five thousand gallons a
8 day, is and shall be exempt from the provisions of this section, but,
9 to the extent that it is regularly used beneficially, shall be entitled
10 to a right equal to that established by a permit issued under the
11 provisions of this chapter: PROVIDED, HOWEVER, That the department
12 from time to time may require the person or agency making any such
13 small withdrawal to furnish information as to the means for and the
14 quantity of that withdrawal: PROVIDED, FURTHER, That at the option of
15 the party making withdrawals of groundwaters of the state not exceeding
16 five thousand gallons per day, applications under this section or
17 declarations under RCW 90.44.090 may be filed and permits and
18 certificates obtained in the same manner and under the same
19 requirements as is in this chapter provided in the case of withdrawals
20 in excess of five thousand gallons a day.

21 (2)(a) The owner of a permit exempt withdrawal established under
22 this section, the beneficial use of which is commenced on or after the
23 effective date of this section, must register the withdrawal with the
24 department on a registration form provided by the department. The
25 registration must include information regarding the ownership and
26 intended purpose of the withdrawal, the amounts withdrawn or proposed
27 to be withdrawn, and the location, size, depth, and other particulars
28 regarding the well. The department shall make the registration form
29 available on its internet site and shall accept the filing of
30 registration forms electronically as well as by conventional mail or
31 personal delivery.

32 (b) For each permit exempt withdrawal the beneficial use of which
33 is commenced on or after the effective date of this section, the
34 registration form must be accompanied by a fee of three hundred
35 dollars. Upon receiving a completed registration form and fee, the
36 department shall make a record of the registration form and shall
37 return a copy of the registration marked as having been received and
38 registered.

1 (c) The well or wells being registered must be tagged in accordance
2 with RCW 18.104.040(6). The department shall provide an identification
3 tag for each well and shall instruct the owner to affix the tags to the
4 wells used to withdraw water.

5 (d) Whenever the owner of a permit exempt withdrawal adds dwelling
6 units or additional purposes for the use of the withdrawal or otherwise
7 increases the amount of water to be withdrawn by more than twenty
8 percent, a new registration form and fee of one hundred dollars must be
9 filed.

10 (e) All fees collected under this section must be deposited into
11 the water rights processing and dam safety account created in section
12 2 of this act.

13 (3) The department may issue either an order under RCW 43.27A.190
14 or a civil penalty under RCW 90.03.600, or both, to the owner of a new
15 permit exempt withdrawal who fails to file the registration form and
16 fee required in subsection (2) of this section. Before issuing an
17 order or penalty, the department shall inform the owner in writing by
18 registered mail with return receipt that the registration form and fee
19 must be remitted within thirty days. An order issued under this
20 subsection may require the owner to cease withdrawing and using water
21 until the form and fee have been filed. If the owner continues to
22 refuse to file the form and fee, the department may issue an order
23 requiring that the subject well or wells be decommissioned.

24 (4) A permit exempt withdrawal, the beneficial use of which is
25 commenced on or after the effective date of this section, that has not
26 been registered may not be recognized as a water right under a general
27 adjudication of water rights held under chapter 90.03 RCW.

28 NEW SECTION. Sec. 6. A new section is added to chapter 90.03 RCW
29 to read as follows:

30 The department may periodically adopt rules to adjust the fees
31 established in RCW 90.03.470. Any subsequent fees adopted by rule
32 supersede those provided in RCW 90.03.470. Before proposing to adopt
33 any changes to the fees, the department shall consult with the policy
34 committees of the legislature that review water resources legislation.

35 NEW SECTION. Sec. 7. A new section is added to chapter 90.03 RCW
36 to read as follows:

1 (1) The department shall submit a report to the legislature prior
2 to December 31, 2012, and biennially thereafter until December 31,
3 2020, on the status of the backlog of applications for water right
4 permits, the effectiveness of processing water right permit
5 applications to a conclusion within twelve months, and the
6 appropriateness of the fee amounts.

7 (2) This section expires January 1, 2021."

8 Correct the title.

EFFECT: Changes the examination fee for the examination of an application for a permit to appropriate water or for an application to change, transfer, or amend an existing water right from \$100 per cubic foot per second (cfs) to \$35 per cfs and changes the maximum amount from \$50,000 to \$35,000.

Removes the section on permit exempt wells and their required registration and fee.

Establishes a hardship grant program in the department of ecology to assistant applicants in the payment of fees.

Makes technical changes.

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