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**SUBSTITUTE HOUSE BILL 2591**

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**State of Washington                      61st Legislature                      2010 Regular Session**

**By** House Agriculture & Natural Resources (originally sponsored by Representatives Morris and Chase)

READ FIRST TIME 01/27/10.

1            AN ACT Relating to the cost of processing applications for water  
2 right permits; amending RCW 90.03.470 and 90.44.050; adding new  
3 sections to chapter 90.03 RCW; creating a new section; prescribing  
4 penalties; and providing an expiration date.

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

6            NEW SECTION.    **Sec. 1.** It is the intent of the legislature to  
7 recover the actual cost of processing applications for water right  
8 permits and to stop subsidizing the processing of water right permits  
9 out of general tax revenues. The legislature recognizes that the  
10 largest beneficiary of receiving a water permit is the person receiving  
11 the water permit.

12            It is further the intent of the legislature that the backlog of  
13 applications be eliminated within four years of the effective date of  
14 this section and that thereafter water right permit applications be  
15 processed to a conclusion within twelve months of an application being  
16 made to the department of ecology.

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

1 The water rights processing and dam safety account is created in  
2 the state treasury. All receipts from the fees collected under RCW  
3 90.03.470 must be deposited into the account. Moneys in the account  
4 may be spent only after appropriation. Expenditures from the account  
5 may be used only to support the processing of water right applications  
6 and change applications as provided in this chapter and chapters 90.38,  
7 90.42, and 90.44 RCW and the safety inspection of hydraulic works and  
8 plans and specifications for such works.

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

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

13 (1) The following fees apply for the examination of an application  
14 for a permit to appropriate water (~~(, a minimum fee of fifty)~~) or for an  
15 application to change, transfer, or amend an existing water right:

16 (a) For up to two-hundredths cubic foot per second (0.02) of water,  
17 an examination fee of two thousand dollars must be remitted with the  
18 application.

19 (b) For an amount of water exceeding (~~(one-half)~~) two one-  
20 hundredths (0.02) cubic foot per second but less than or equal to one-  
21 tenth (0.1) cubic foot per second, (~~(the)~~) an examination fee (~~(shall~~  
22 be assessed at the rate of one dollar per one hundredth cubic foot per  
23 second)) of three thousand dollars must be remitted with the  
24 application. (~~(In no case will the examination fee be less than fifty~~  
25 dollars or more than twenty five thousand dollars. No fee is required  
26 under this subsection (1) for an application filed by a party to a  
27 cost-reimbursement agreement made under RCW 90.03.265.))

28 (c) For an amount of water exceeding one-tenth cubic foot per  
29 second but less than or equal to one-half cubic foot per second, an  
30 examination fee of four thousand five hundred dollars must be remitted  
31 with the application.

32 (d) For an amount of water exceeding one-half cubic foot per second  
33 but less than or equal to one cubic foot per second, an examination fee  
34 of ten thousand dollars must be remitted with the application.

35 (e) For an amount of water exceeding one cubic foot per second but  
36 less than or equal to ten cubic feet per second, an examination fee of  
37 fifteen thousand dollars must be remitted with the application.

1 (f) For an amount of water exceeding ten cubic feet per second, an  
2 examination fee of twenty-five thousand dollars must be remitted with  
3 the application.

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 subsections (1) and  
37 (2) of this section apply to applications received after the effective  
38 date of this section and to all applications that have not been acted  
on by the department by issuance of a report of examination as of the

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

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

18 ~~(5) The ((fees specified in subsections (1) through (3) of this~~  
19 ~~section do not apply to any filings)) fee for filing an emergency  
20 withdrawal authorization(~~(s)~~) or temporary drought-related water right  
21 change(~~(s)~~) authorized under RCW 43.83B.410 that (~~(are)~~) is received by  
22 the department while a drought condition order issued under RCW  
23 43.83B.405 is in effect is one hundred dollars.~~

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

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

1 ~~examined and approved the construction plans and specifications as to~~  
2 ~~its safety when required under RCW 90.03.350, the fee charged shall not~~  
3 ~~exceed the fee for a significant hazard dam)).~~

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

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

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

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

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

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

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

35 (b) Applications not in good standing must be canceled. The  
36 department shall issue an order to any holder of an application who  
37 fails to pay the fee within the prescribed time. The order must state

1 that the application is canceled unless payment is received within  
2 thirty days.

3 (15) An application or request for an action as provided for under  
4 this section is incomplete unless accompanied by the fee or the minimum  
5 fee. If no fee or an amount less than the minimum fee accompanies an  
6 application or other request for an action as provided under this  
7 section, the department shall return the application or request to the  
8 applicant with advice as to the fee that must be remitted with the  
9 application or request for it to be accepted for processing. If  
10 additional fees are due, the department shall provide timely  
11 notification by certified mail with return receipt requested to the  
12 applicant. No action may be taken by the department until the fee is  
13 paid in full. Failure to remit fees within sixty days of the  
14 department's notification is grounds for rejecting the application or  
15 request or canceling the permit. Cash shall not be accepted. Fees  
16 must be paid by check or money order and are nonrefundable.

17 ~~((14))~~ (16) For purposes of calculating fees for groundwater  
18 filings, one cubic foot per second shall be regarded as equivalent to  
19 four hundred fifty gallons per minute.

20 ~~((15) Eighty percent of the fees collected by the department under~~  
21 ~~this section shall be deposited in the state general fund. Twenty~~  
22 ~~percent of the fees collected by the department under this section~~  
23 ~~shall be deposited in the water rights tracking system account~~  
24 ~~established in RCW 90.14.240.~~

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

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

33 (18) The fees specified in this section are effective through June  
34 30, 2011, or until the department adopts rules that modifies them in  
35 accordance with section 5 of this act, whichever occurs later, except  
36 that the fees required in subsections (7) and (8) of this section may  
37 be modified at any time.

1           **Sec. 4.** RCW 90.44.050 and 2003 c 307 s 1 are each amended to read  
2 as follows:

3           (1) After June 6, 1945, no withdrawal of public groundwaters of the  
4 state shall be begun, nor shall any well or other works for such  
5 withdrawal be constructed, unless an application to appropriate such  
6 waters has been made to the department and a permit has been granted by  
7 it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public  
8 groundwaters for stock-watering purposes, or for the watering of a lawn  
9 or of a noncommercial garden not exceeding one-half acre in area, or  
10 for single or group domestic uses in an amount not exceeding five  
11 thousand gallons a day, or as provided in RCW 90.44.052, or for an  
12 industrial purpose in an amount not exceeding five thousand gallons a  
13 day, is and shall be exempt from the provisions of this section, but,  
14 to the extent that it is regularly used beneficially, shall be entitled  
15 to a right equal to that established by a permit issued under the  
16 provisions of this chapter: PROVIDED, HOWEVER, That the department  
17 from time to time may require the person or agency making any such  
18 small withdrawal to furnish information as to the means for and the  
19 quantity of that withdrawal: PROVIDED, FURTHER, That at the option of  
20 the party making withdrawals of groundwaters of the state not exceeding  
21 five thousand gallons per day, applications under this section or  
22 declarations under RCW 90.44.090 may be filed and permits and  
23 certificates obtained in the same manner and under the same  
24 requirements as is in this chapter provided in the case of withdrawals  
25 in excess of five thousand gallons a day.

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

35           (b) For each claimed permit exempt withdrawal the beneficial use of  
36 which was commenced prior to January 1, 2010, the registration form  
37 must be accompanied by a fee of fifty dollars. For each permit exempt  
38 withdrawal the beneficial use of which is commenced on or after January



1 1, 2010, the registration form must be accompanied by a fee of three  
2 hundred dollars. Upon receiving a completed registration form and fee,  
3 the department shall make a record of the registration form and shall  
4 return a copy of the registration marked as having been received and  
5 registered.

6 (c) If the well or wells being registered have not previously been  
7 tagged in accordance with RCW 18.104.040(6), the department shall  
8 provide an identification tag for each well and shall instruct the  
9 owner to affix the tags to the wells used to withdraw water.

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

15 (e) For administrative efficiency, the department may phase in on  
16 a county by county basis the requirement to register permit exempt  
17 withdrawals in use prior to January 1, 2010.

18 (f) All fees collected under this section must be deposited into  
19 the water rights processing and dam safety account created in section  
20 2 of this act.

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

32 (4) A permit exempt withdrawal that has not been registered shall  
33 not be recognized as a water right under a general adjudication of  
34 water rights held under chapter 90.03 RCW.

35 NEW SECTION. Sec. 5. A new section is added to chapter 90.03 RCW  
36 to read as follows:

37 To effectuate the purpose of fully recovering the direct

1 administrative costs incurred by the state to process water right and  
2 storage applications under this chapter and RCW 90.44.050 and to  
3 inspect and approve hydraulic works under this chapter, the department  
4 may periodically adopt rules to adjust the fees established in RCW  
5 90.03.470. The fees adopted by rule supersede those provided in RCW  
6 90.03.470. Before proposing to adopt any changes to the fees, the  
7 department shall consult with the policy committees of the legislature  
8 that review water resources legislation.

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

11 (1) The department shall submit a report to the legislature prior  
12 to December 31, 2011, and biennially thereafter until December 31,  
13 2019, on the status of the backlog of applications for water right  
14 permits, the effectiveness of processing water right permit  
15 applications to a conclusion within twelve months, and the  
16 appropriateness of the fee amounts.

17 (2) This section expires January 1, 2020.

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