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HOUSE BILL 2050

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State of Washington

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**By** Representatives Hudgins, Hunt, Ormsby, Fitzgibbon, Upthegrove, Cody, Dunshee, Lias, Billig, Reykdal, Sells, Dickerson, Hasegawa, Appleton, McCoy, and Ryu

Read first time 04/05/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to establishing an annual water rights protection  
2 fee; amending RCW 90.14.240; adding new sections to chapter 90.03 RCW;  
3 and prescribing penalties.

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)(a) Beginning in fiscal year 2011 and every state fiscal year  
8 thereafter, except as provided in this section, intensive water users  
9 who hold a water right document for industrial, agricultural, or  
10 commercial purposes must annually remit a water right protection fee as  
11 provided in subsection (2) of this section.

12 (b) Exceptions to the requirement to pay water resources management  
13 services fees under this subsection are as follows:

14 (i) A water right for generating hydroelectric power that requires  
15 payment of an annual license fee under RCW 90.16.050;

16 (ii) A nonconsumptive water right that does not diminish the source  
17 of water;

18 (iii) A water right held by the state of Washington;

1 (iv) A water right held in trust by the state of Washington under  
2 chapter 90.38 or 90.42 RCW, identified solely for instream purposes and  
3 including water rights held temporarily in trust;

4 (v) A water right held by the United States, including rights of  
5 Indian tribes held in trust by the United States;

6 (vi) A water right for storage in a reservoir under RCW 90.03.370.  
7 However, water quantities documented under a secondary permit or  
8 otherwise documented for a beneficial use of water from a reservoir as  
9 the source of water supply, must be assessed the applicable fee under  
10 subsection (2) of this section;

11 (vii) Persons or entities, both permitted and permit-exempt, that  
12 use water for domestic purposes; and

13 (viii) Persons or entities, both permitted and permit-exempt, that  
14 use small or moderate amounts of water for industrial, agricultural, or  
15 commercial purposes.

16 (2)(a) The following schedule of annual water right protection fees  
17 apply only to intensive water users that hold a water right document  
18 for industrial, agricultural, or commercial uses. The fees are based  
19 upon the maximum annual diversion or withdrawal volume allowed under  
20 the water right document as follows:

21 (i) For equal to or more than one cubic foot per second and less  
22 than eleven cubic feet per second, four hundred fifty dollars;

23 (ii) For equal to or more than eleven cubic feet per second and  
24 less than two hundred twenty-eight cubic feet per second, seven hundred  
25 fifty dollars; and

26 (iii) For equal to or more than two hundred twenty-eight cubic feet  
27 per second, nine hundred dollars.

28 (b) An intensive water user who holds a water right document for  
29 industrial, agricultural, or commercial purposes must be assessed a  
30 single fee for the cumulative quantity of multiple water rights on  
31 record when these rights are appurtenant to the same or adjacently  
32 owned properties. The single fee only accounts for the quantity of  
33 water that can legally be exercised at one time under a user's  
34 portfolio of water rights. In any case, no intensive water user  
35 subject to this fee schedule is required to pay more than nine hundred  
36 dollars per year.

37 (3) The fees established in this section must also be remitted by  
38 intensive water users that have a water right document for industrial,

1 agricultural, or commercial purposes and that have a contract with the  
2 United States to use water provided under a water right document held  
3 by the United States. The amount of the fees to be paid by such a  
4 contractor are as provided in subsection (2) of this section based on  
5 the maximum delivery rate under the contract.

6 (4)(a) The department shall provide notice by mail of the  
7 requirement to pay fees. The notice must provide at least sixty days  
8 from the date of mailing before the fee is due.

9 (b) For ease and efficiency of administration, the department may  
10 stagger the issuance of the notices and the due dates for payment of  
11 the fee throughout a year by geographic regions of the department and  
12 shall determine the sequence of notification by county within each  
13 region through a random drawing of county names.

14 (c) The department shall provide a second notice after ninety days  
15 of the date of the original mailing of notice to an intensive water  
16 user who has not responded. The second notice must be by certified  
17 mail with return receipt requested and require payment within thirty  
18 days of the mailing of the second notice. The cost of certified  
19 mailing must be added to the amount due.

20 (d) The department shall widely publicize the requirement for water  
21 right holders and claimants to pay the fees in this section through  
22 public notices, public service announcements, dissemination through  
23 newsletters of stakeholder groups, by posting on the department's  
24 internet web site, and by other means, including the use of online or  
25 electronic filing of forms and payments the department determines would  
26 be helpful in achieving compliance with these requirements.

27 (5) For the purpose of updating water right records, the  
28 department's initial notice must include a form that must be completed  
29 and returned with the initial fee payment by an intensive water user  
30 that holds a water right for industrial, agricultural, or commercial  
31 purposes. The form must include, but is not limited to, the following  
32 information:

33 (a) The identifying water right number that appears on the  
34 supporting document or documents of the subject water right.  
35 Alternately, enclosing a copy of the water right permit, certificate,  
36 or statement of claim filed under RCW 90.14.061 satisfies this  
37 requirement;

1 (b) The name, address, and telephone number of the entity holding  
2 the water right, if different from the name and contact information in  
3 the bill;

4 (c) The location or locations at which water is diverted,  
5 withdrawn, or stored;

6 (d) The legal description and, if available, physical address of  
7 the property or properties on which the water is used;

8 (e) The purpose or purposes for which water is diverted, withdrawn,  
9 or stored;

10 (f) The acreage of land irrigated, whether for commercial or  
11 noncommercial purposes, if applicable; and

12 (g) The product or products manufactured or the nature of the  
13 commercial enterprise in which water is used, if applicable.

14 (6) The holder of a water right document whose diversion or  
15 withdrawal is metered or measured by a measuring device that is  
16 compliant with the department's metering standards, such as those found  
17 in applicable agency rules, qualifies for a ten percent discount from  
18 the fees required by subsection (2) of this section provided the holder  
19 of the water right document files with the department a one-time  
20 notarized statement confirming that the holder's measuring device  
21 complies with department standards. The notarized statement must be in  
22 a form provided by the department.

23 (7) An intensive water user may reduce or avoid paying the fee  
24 established in subsection (2) of this section by informing the  
25 department, prior to the date the fee is due, that the water right  
26 document holder intends to withdraw or amend the person's water right  
27 document to reduce the amount on record. The department shall send the  
28 intensive water user the appropriate paperwork to be submitted for this  
29 purpose and reduce the amount of fees due according to the amended  
30 quantity of water. Actions under this subsection do not relieve an  
31 intensive water user from the payment of past due fees from a prior  
32 year.

33 (8)(a) If an intensive water user required to pay a fee under  
34 subsection (2) of this section fails to do so within one year of the  
35 date that the intensive water user receives the second notice by  
36 certified mail, the department may initiate lien proceedings against  
37 the right or claim or cancellation of the permit, and the intensive

1 water user's right may be subject to interruption. The water user must  
2 be informed that interest will accrue on any unpaid fee amount in  
3 accordance with (c) of this subsection.

4 (b) The department may issue orders under RCW 43.27A.190 and civil  
5 penalties under RCW 90.03.600 as a result of unpaid fees.

6 (c) Interest on unpaid fees accrues and compounds after payment is  
7 ninety days overdue. The interest rate is based on the federal prime  
8 rate on January 1st of the year in which the interest accrues.

9 (d) The department may contract with the state department of  
10 revenue or other appropriate entities for administration and collection  
11 of fees authorized in this section.

12 (e) The department may not consider an amendment or change to a  
13 water right document until unpaid fees are remitted.

14 (9) All receipts from the fees collected under this section must be  
15 deposited into the water rights protection account established in RCW  
16 90.14.240.

17 (10) Payments remitted under this section are not refundable except  
18 in the case of administrative error that results in overpayment.

19 (11) Payment of fees required by this section does not constitute  
20 a determination or affirmation of or prima facie evidence of the  
21 validity or extent of any water right or claim.

22 (12) For the purposes of this section, a "water right document"  
23 includes: A permit issued under RCW 90.03.290, 90.03.370, or  
24 90.44.050; a water right certificate issued under RCW 90.03.240,  
25 90.03.330, 90.44.080, or 90.44.090; information furnished by a ground  
26 water user as required by the department under RCW 90.44.050; or a  
27 statement of claim filed under RCW 90.14.061.

28 **Sec. 2.** RCW 90.14.240 and 2005 c 412 s 3 are each amended to read  
29 as follows:

30 The water rights (~~((tracking system))~~) protection account is created  
31 in the custody of the state (~~((treasury))~~) treasurer. (~~((Twenty percent~~  
32 ~~of the fees collected by the department of ecology according to RCW~~  
33 ~~90.03.470))~~) All receipts from the fees received under section 1 of this  
34 act must be deposited in the account. (~~((Moneys in the account may be~~  
35 ~~spent only after appropriation.))~~) Expenditures from the account may be  
36 used by the department of ecology (~~((for the development,~~  
37 ~~implementation, and management of a water rights tracking system,~~

1 ~~including a water rights mapping system and a water rights database))~~  
2 to assist and support water right document holders and to prevent and  
3 address impairment of water rights through department activities,  
4 including but not limited to monitoring, consolidating data and  
5 information, making information accessible to the public, and  
6 enforcement of state water laws. Only the director of the department  
7 or the director's designee may authorize expenditures from the account.  
8 The account is subject to allotment procedures under chapter 43.88 RCW,  
9 but an appropriation is not required for expenditures.

10 NEW SECTION. Sec. 3. A new section is added to chapter 90.03 RCW  
11 to read as follows:

12 The department shall establish and maintain up-to-date records of  
13 the entities that hold water rights and claimed rights. It is the  
14 responsibility of all water right holders and claimants to inform the  
15 department when there is a change in ownership or contact information.  
16 The department shall make forms available, including electronically,  
17 for use by persons reporting a change in this information.

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

20 The department may adopt rules to modify and update the fees  
21 established in RCW 90.03.470. The fees must be based on the  
22 department's actual cost to carry out the actions for which fees are  
23 charged in RCW 90.03.470.

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

26 The department must submit a report to the governor and the  
27 legislature on the status of protecting water rights and instream flow  
28 rights by November 30, 2012, and by November 30th of every even-  
29 numbered year thereafter through 2020.

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