
SUBSTITUTE HOUSE BILL 2508

State of Washington

61st Legislature

2010 Regular Session

By House Agriculture & Natural Resources (originally sponsored by Representatives Blake and Chandler; by request of Department of Ecology)

READ FIRST TIME 02/03/10.

1 AN ACT Relating to water right processing improvements; amending
2 RCW 90.03.265, 90.03.255, 90.14.065, and 90.44.055; adding a new
3 section to chapter 90.44 RCW; and adding new sections to chapter 90.03
4 RCW.

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

6 **Sec. 1.** RCW 90.03.265 and 2003 c 70 s 6 are each amended to read
7 as follows:

8 (1)(a) Any applicant for a new withdrawal or a change, transfer, or
9 amendment of a water right pending before the department(~~(,)~~) may
10 initiate a cost-reimbursement agreement with the department to provide
11 expedited review of the application. Except as provided in (b) of this
12 subsection, a cost-reimbursement agreement may (~~only~~) be initiated
13 under this subsection if the applicant agrees to pay for(~~(, or as part~~
14 of a cooperative effort agrees to pay for,)) the cost of processing his
15 or her application and all other applications from the same source of
16 supply which must be acted upon before the applicant's request because
17 they were filed prior to the date of when the applicant filed.

18 (b) The requirement to pay for the cost of all other applications

1 from the same source of supply under (a) of this subsection does not
2 apply if:

3 (i) The application for a new appropriation or a change, transfer,
4 or amendment of a water right would not diminish the water available to
5 earlier pending applicants from the same source of supply, including an
6 application that provides a water impoundment or other water resource
7 management mitigation technique under RCW 90.03.255 or 90.44.055
8 acceptable to the department; or

9 (ii) The applicant agrees to pay for the cost of processing his or
10 her application as part of a coordinated cost-reimbursement agreement
11 entered under subsection (3) of this section.

12 (c) The department may enter into cost-reimbursement agreements,
13 provided resources are available, and shall use the process established
14 under RCW 43.21A.690 for entering into cost-reimbursement agreements.
15 The department's share of work related to a cost-reimbursement
16 application, such as final certificate approval, must be prioritized
17 within the framework of other water right processing needs.

18 (d) Each individual applicant is responsible for his or her own
19 appeal costs that may result from a water right decision made by the
20 department. In the event that an applicant's water right approval is
21 appealed under chapter 43.21B RCW by a third party, the applicant for
22 the water right in question must reimburse the department for the cost
23 of defending the decision.

24 (2) In pursuing a cost-reimbursement project, the department must
25 determine the source of water proposed to be diverted or withdrawn
26 from, including the boundaries of the area that delimits the source.
27 The department must determine if any other water right permit
28 applications are pending from the same source. A water source may
29 include surface water only, ground water only, or surface and ground
30 water together if the department believes they are hydraulically
31 connected. The department shall consider technical information
32 submitted by the applicant in making its determinations under this
33 subsection.

34 (3)(a) If the department determines that the public interest is
35 best served by initiation of a coordinated cost-reimbursement project,
36 the department must notify in writing all persons who have pending
37 applications on file for a new appropriation or withdrawal of water
38 from the same source. Such a notice must be made by way of mail. The

1 notification must inform those applicants that a coordinated cost-
2 reimbursement process is being initiated. The notice must offer the
3 opportunity to voluntarily participate in funding a cost-reimbursement
4 contractor to investigate and make recommendations to the department
5 regarding the disposition of the applications. The notice must also
6 provide the estimated cost for having an application processed using a
7 cost-reimbursement contractor. The notice must provide not less than
8 sixty days for the applicants to respond in writing as to their
9 interest in participating in the coordinated cost-reimbursement
10 processing of their applications. The department shall adjust the
11 estimated costs for each participant based on those applicants electing
12 to participate. The department may initiate a coordinated cost-
13 reimbursement project: (i) On its own volition; (ii) upon receipt of
14 a written request from an applicant; (iii) upon receipt of a written
15 request or recommendation from a watershed planning unit; or (iv) upon
16 receipt of a resolution of a county or city legislative authority with
17 jurisdiction over the area in which the water source is located.

18 (b) Each applicant who consents to participate in a coordinated
19 cost-reimbursement process must sign a contract with the department
20 agreeing to pay a pro rata share to the department of the cost of the
21 contractors and the department's costs, with an applicant's share of
22 cost being determined by the percentage of each applicant's
23 instantaneous quantity applied for relative to the sum of the
24 instantaneous quantities applied for by all the participating
25 applicants.

26 (c) For any applicant who elects to not participate in the
27 coordinated cost-reimbursement process or who fails to respond in
28 writing within the time allowed, the department shall retain the
29 application on file until such time as the department is able to
30 process it. These applicants may seek to initiate a cost-reimbursement
31 process at a later date, under either subsection (1)(a) or (3)(a) of
32 this section. The department shall process remaining applications on
33 file within the framework of other water right processing needs, as
34 determined by agency rule and to the extent resources are available.

35 (d) Coordinated cost reimbursement under this section applies only
36 to the sequence of application processing and does not affect the
37 relative priority date of any resulting water rights.

1 (4) The department shall provide notice to potential contractors of
2 the opportunity to be considered for inclusion on the list of cost-
3 reimbursement contractors to whom work assignments will be made. The
4 department shall competitively select an appropriate number of
5 contractors who are qualified by training and experience to investigate
6 and make recommendations on the disposition of water rights
7 applications. The contractor list must be renewed at least every six
8 years, though the department may add qualified cost-reimbursement
9 contractors to the list at any time. The department shall enter a
10 master contract with each contractor selected and shall thereafter make
11 work assignments based on availability and qualifications.

12 (5) The department may remove any contractor from the contractor
13 list for poor performance, malfeasance, or excessive complaints from
14 cost-reimbursement participants. The department may interview any
15 cost-reimbursement contractor to determine whether the person is
16 qualified for this work, and shall spot check the work of contractors
17 to ensure that the public is being competently served.

18 (6) When assigned an application or set of applications to
19 investigate, the contractor must document its findings and recommended
20 disposition in the form of written draft reports of examination.
21 Within two weeks of the department receiving the draft reports of
22 examination, an applicant may provide comments to the department on the
23 contents of the report. The department may modify the reports of
24 examination submitted by the contractor. The department's decision on
25 a permit application is final unless it is appealed to the pollution
26 control hearings board under chapter 43.21B RCW.

27 NEW SECTION. Sec. 2. A new section is added to chapter 90.44 RCW
28 to read as follows:

29 Applications to appropriate ground water under a cost-reimbursement
30 agreement must be processed in accordance with RCW 90.03.265 when an
31 applicant requests the assignment of a cost-reimbursement contractor as
32 provided in RCW 43.21A.690.

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

35 (1) The department shall establish and maintain a list of certified
36 water right examiners. Certified water right examiners on the list are

1 eligible to perform final proof examinations of permitted water uses
2 leading to the issuance of a water right certificate. The list must be
3 updated annually and must be made available to the public through
4 written and electronic media.

5 (2) In order to qualify for inclusion on the list, an individual
6 must be registered in Washington as a professional engineer,
7 professional land surveyor, or registered hydrogeologist or demonstrate
8 at least five years of applicable experience to the department.
9 Qualified individuals must also pass a written examination prior to
10 being certified by the department. Such an examination must be
11 administered by either the department or an entity formally approved by
12 the department. Each certified water right examiner must demonstrate
13 knowledge and competency regarding:

- 14 (a) Water law in the state of Washington;
- 15 (b) Measurement of the flow of water through open channels and
16 enclosed pipes;
- 17 (c) Water use and water level reporting;
- 18 (d) Estimation of the capacity of reservoirs and ponds;
- 19 (e) Irrigation crop water requirements;
- 20 (f) Aerial photo interpretation;
- 21 (g) Legal descriptions of land parcels;
- 22 (h) Location of land and water infrastructure through the use of
23 maps and global positioning;
- 24 (i) Proper construction and sealing of well bores; and
- 25 (j) Other topics related to the preparation and certification of
26 water rights in Washington state.

27 (3) Except as provided in subsection (8) of this section, upon
28 completion of a water appropriation and putting water to beneficial
29 use, in order to receive a final water right certificate, the permit
30 holder must secure the services of a certified water right examiner who
31 has been tested and certified by the department. The examiner shall
32 carry out a final examination of the project to verify its completion
33 and to determine and document for the permit holder and the department
34 the amount of water that has been appropriated for beneficial use, the
35 location of diversion or withdrawal and conveyance facilities, and the
36 actual place of use. The examiner shall take measurements or make
37 estimates of the maximum diversion or withdrawal, the capacity of water
38 storage facilities, the acreage irrigated, the type and number of

1 residences served, the type and number of stock watered, and other
2 information relevant to making a final determination of the amount of
3 water beneficially used. The examiner shall make photographs of the
4 facilities to document the use or uses of water and the photographs
5 must be submitted with the examiner's report to the department. The
6 department shall specify the format and required content of the reports
7 and may provide a form for that purpose.

8 (4) The department may suspend or revoke a certification based on
9 poor performance, malfeasance, failure to acquire continuing education
10 credits, or excessive complaints from the examiner's customers. The
11 department may require the retesting of an examiner. The department
12 may interview any examiner to determine whether the person is qualified
13 for this work. The department shall spot check the work of examiners
14 to ensure that the public is being competently served. Any person
15 aggrieved by an order of the department including the granting, denial,
16 revocation, or suspension of a certificate issued by the department
17 under this chapter may appeal pursuant to chapter 43.21B RCW.

18 (5) The decision regarding whether to issue a final water right
19 certificate and in what amounts and other particulars is solely the
20 responsibility and function of the department.

21 (6) Each certified water right examiner must complete eight hours
22 annually of qualifying continuing education in the water resources
23 field. The department shall determine and specify the qualifying
24 continuing education and shall inform examiners of the opportunities.
25 The department shall track whether examiners are current in their
26 continuing education and may suspend the certification of an examiner
27 who has not complied with the continuing education requirement.

28 (7) Each certified water right examiner must be bonded for at least
29 fifty thousand dollars.

30 (8) The department may waive the requirement to secure the services
31 of a certified water right examiner in situations in which the
32 department deems it unnecessary for purposes of issuing a certificate
33 of water right.

34 (9) The department shall establish and collect fees for the
35 examination, certification, and renewal of certification of water right
36 examiners. Pursuant to RCW 43.135.055, the department is authorized to
37 set fees for examination, certification, and renewal of certification
38 for water right examiners.

1 (10) The department may adopt rules appropriate to carry out the
2 purposes of this section.

3 **Sec. 4.** RCW 90.03.255 and 1997 c 360 s 2 are each amended to read
4 as follows:

5 (1) The department shall, when evaluating an application for a
6 water right, transfer, or change filed pursuant to RCW 90.03.250 or
7 90.03.380 that includes provision for any water impoundment or other
8 resource management technique, take into consideration the benefits and
9 costs, including environmental effects, of any water impoundment or
10 other resource management technique that is included as a component of
11 the application. The department's consideration shall extend to any
12 increased water supply that results from the impoundment or other
13 resource management technique, including but not limited to any
14 recharge of groundwater that may occur, as a means of making water
15 available or otherwise offsetting the impact of the diversion of
16 surface water proposed in the application for the water right,
17 transfer, or change. ((Provision for an impoundment or other resource
18 management technique in an application shall be made solely at the
19 discretion of the applicant and shall not otherwise be made by the
20 department as a condition for approving an application that does not
21 include such provision.))

22 (2) If the department determines that no water remains available
23 for any unmitigated new appropriation from a water source, the
24 department shall notify all persons holding pending applications to
25 divert water from that source of the determination. The department's
26 determination and notice must be specific in describing the affected
27 stream reaches, the extent of groundwater hydraulically connected to
28 those reaches, and when applicable, the location and seasonality of
29 water available for interruptible use. Any proposed impoundment or
30 resource management technique must not diminish the water available
31 from the described source of supply.

32 (3) The department may place pending applications for appropriation
33 from a particular water source into project-dependent status where a
34 proposed water supply development project or projects could feasibly
35 make water available for such dormant applications, including municipal
36 water applicants that have an approved water system plan under chapter
37 43.20 RCW that outlines projected future water demand and how they

1 intend to acquire the water to supply those demands. The department
2 may make a determination to place pending applications for
3 appropriation from a particular water source into project-dependent
4 status: (a) On its own volition; (b) upon receipt of a written request
5 or recommendation from a watershed planning unit; or (c) upon receipt
6 of a resolution of a county or city legislative authority with
7 jurisdiction over the area in which the water source is located. The
8 department shall notify all persons holding pending applications of
9 that determination. Each applicant retains their priority date while
10 in project-dependant status. Pending applications remain in project-
11 dependent status as long as the project remains feasible.

12 (4) Upon the written request of any applicant who requests it, the
13 department shall provide a contact list of all other applicants who
14 received notification under this section for purposes of enabling
15 applicants to coordinate among each other to develop plans for water
16 impoundment or other resource management technique required by this
17 section.

18 (5) This section does not lessen, enlarge, or modify the rights of
19 any riparian owner, or any existing water right acquired by
20 appropriation or otherwise.

21 (6) Any final determination made by the department under this
22 section is appealable to the pollution control hearings board as
23 authorized under chapter 43.21B RCW.

24 **Sec. 5.** RCW 90.14.065 and 1987 c 93 s 1 are each amended to read
25 as follows:

26 (1)(a) Any person or entity, or successor to such person or entity,
27 having a statement of claim on file with the water rights claims
28 registry (~~on April 20, 1987,~~) may submit to the department of ecology
29 for filing(~~7~~) an amendment to such a statement of claim if the
30 submitted amendment is based on:

31 (~~(1)~~) (i) An error in estimation of the quantity of the
32 applicant's water claim prescribed in RCW 90.14.051 if the applicant
33 provides reasons for the failure to claim such right in the original
34 claim;

35 (~~(2)~~) (ii) A change in circumstances not foreseeable at the time
36 the original claim was filed, if such change in circumstances relates

1 only to the manner of transportation or diversion of the water and not
2 to the use or quantity of such water; or

3 ~~((3))~~ (iii) The amendment is ministerial in nature.

4 (b) The department shall accept any such submission and file the
5 same in the registry unless the department by written determination
6 concludes that the requirements of (a)(i), (ii), or (iii) of this
7 subsection ~~((1), (2), or (3) of this section)~~ have not been
8 satisfied.

9 (2) A surface water right claim may be changed or transferred in
10 the same manner as a permit or certificate under RCW 90.03.380, and a
11 water right claim for groundwater may be changed or amended in the same
12 manner as a permit or certificate under RCW 90.44.100. However, RCW
13 90.44.100(4) applies as follows: For a water right claim, the
14 "location of the original well or wells" is the area up to one-quarter
15 mile radius from the current well or wells.

16 (3) Any person aggrieved by a determination of the department may
17 obtain a review thereof by filing a petition for review with the
18 pollution control hearings board within thirty days of the date of the
19 determination by the department. The provisions of RCW 90.14.081 shall
20 apply to any amendment ~~((filed))~~ approved under this section.

21 **Sec. 6.** RCW 90.44.055 and 1997 c 360 s 3 are each amended to read
22 as follows:

23 (1) The department shall, when evaluating an application for a
24 water right or an amendment filed pursuant to RCW 90.44.050 or
25 90.44.100 that includes provision for any water impoundment or other
26 resource management technique, take into consideration the benefits and
27 costs, including environmental effects, of any water impoundment or
28 other resource management technique that is included as a component of
29 the application. The department's consideration shall extend to any
30 increased water supply that results from the impoundment or other
31 resource management technique, including but not limited to any
32 recharge of groundwater that may occur, as a means of making water
33 available or otherwise offsetting the impact of the withdrawal of
34 groundwater proposed in the application for the water right or
35 amendment in the same water resource inventory area. ~~((Provision for~~
36 ~~an impoundment or other resource management technique in an application~~

1 ~~shall be made solely at the discretion of the applicant and shall not~~
2 ~~be made by the department as a condition for approving an application~~
3 ~~that does not include such provision.))~~

4 (2) If the department determines that no water remains available
5 for any unmitigated new appropriation from a water source, the
6 department shall notify all persons holding pending applications to
7 withdraw water from that source of the determination. The department's
8 determination and notice must be specific in describing the affected
9 stream reaches, the extent of groundwater hydraulically connected to
10 those reaches, and when applicable, the location and seasonality of
11 water available for interruptible use. Any proposed impoundment or
12 resource management technique must not diminish the water available
13 from the described source of supply.

14 (3) The department may place pending applications for appropriation
15 from a particular water source into project-dependent status where a
16 proposed water supply development project or projects could feasibly
17 make water available for such dormant applications, including municipal
18 water applicants that have an approved water system plan under chapter
19 43.20 RCW which outlines projected future water demand and how they
20 intend on acquiring the water to supply those demands. The department
21 may make a determination to place pending applications for
22 appropriation from a particular water source into project-dependent
23 status: (a) On its own volition; (b) upon receipt of a written request
24 or recommendation from a watershed planning unit; or (c) upon receipt
25 of a resolution of a county or city legislative authority with
26 jurisdiction over the area in which the water source is located. The
27 department shall notify all persons holding pending applications of
28 that determination. Each applicant retains their priority date while
29 in project-dependant status. Pending applications remain in project-
30 dependent status as long as the project remains feasible.

31 (4) Upon the written request of any applicant who requests it, the
32 department shall provide a contact list of all other applicants who
33 received notification under this section for purposes of enabling
34 applicants to coordinate among each other to develop plans for water
35 impoundment or other resource management technique required by this
36 section.

37 (5) This section does not lessen, enlarge, or modify the rights of

1 any riparian owner, or any existing water right acquired by
2 appropriation or otherwise.

3 (6) Any final determination made by the department under this
4 section is appealable to the pollution control hearings board as
5 authorized under chapter 43.21B RCW.

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

8 The department shall provide electronic notice and opportunity for
9 comment to affected federally recognized tribal governments
10 concurrently when providing notice to applicants under RCW 90.03.265,
11 90.03.255, and 90.44.055.

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