

SENATE BILL REPORT

SB 5934

As of April 19, 2011

Title: An act relating to funding and administering the processing of water rights permits and applications including limiting the review period in making tentative determinations and modifying relinquishment.

Brief Description: Concerning funding and administering the processing of water rights permits and applications.

Sponsors: Senators Rockefeller, Ranker, Chase, Fraser and Nelson.

Brief History:

Committee Activity: Ways & Means:

SENATE COMMITTEE ON WAYS & MEANS

Staff: Chris Godwin (786-7441)

Background: Washington operates under a water right permit system. With certain exceptions, new rights to use surface or ground water or to establish reservoir and storage projects must be established according to the permit system. Exemptions include any withdrawal of public groundwater for stock watering purposes or for watering a lawn or a noncommercial garden less than one half an acre. Single or group domestic uses or industrial purposes in an amount not exceeding 5000 gallons a day are also exempt.

A person seeking a new water right files an application with the Department of Ecology (Ecology), which must consider a four-part test when deciding whether to issue the requested right: (1) whether water is available; (2) whether a beneficial use of water would be made; (3) whether granting the right would impair existing rights; and (4) whether the proposed use would detrimentally affect the public welfare. If an application passes this test, Ecology issues a permit which establishes a time table for constructing the infrastructure to access the water and for putting water to beneficial use. When the conditions of the permit are satisfied, Ecology issues a water right certificate.

Ecology may permit certain changes to a water right. Ecology may also permit a transfer of a water right from one holder to another. In processing change or transfer applications, Ecology analyzes the validity, limits, and quantity of the right. Changes or transfers cannot impair existing rights of other water right holders. Ecology must, when evaluating an

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application for a water use permit or for a transfer, change, or amendment of a water right, take into consideration the benefits of any water impoundment that is included as a component of the application.

Water rights may be relinquished when a person, for five or more consecutive years, abandons or voluntarily fails to beneficially use water in accordance with their recorded right's terms. The water code provides a list of sufficient causes that protect a water right from relinquishment. Additionally, the water code provides a list of exemptions under which there is no relinquishment.

Summary of Bill: An application to change, transfer, or amend a water right or claimed water right must include in the application a legible copy of the right or claim, the existing and proposed points of diversion, and the location of where the water is currently used and where the water is proposed to be used.

Ecology must provide an initial assessment to the applicant that estimates the cost and scope of issues likely involved in processing the application. The purpose of this initial assessment is to assist the applicant by providing them with information so they can decide whether to proceed with having the application processed. If additional information will need to be collected or studies will have to be conducted to answer the applicable tests for issuing a permit or change approval, Ecology must tell the applicant the time and cost to gather the information or complete the studies. Ecology must establish a deadline by which the information or studies must be submitted to Ecology. If this deadline is not met, Ecology must reject or cancel the application. Ecology's initial assessment is not appealable or considered a final decision by Ecology. The applicant may withdraw an application by providing written notice to Ecology. An applicant may elect, or Ecology may require an applicant, to submit a draft report of examination. The draft report of examination must be prepared by or reviewed and approved by a consultant from Ecology's list of cost-reimbursement consultants.

Ecology must establish streamlined processing of certain applications for changes, transfers, and amendments. Streamlined permitting will be used for use of waters reserved for future use, withdrawal of small quantities of domestic water from lakes, beneficial use of storm water, change of purpose of use with no increase in quantity or change in the seasonal pattern of use, and minor changes in the place of use and the point of diversion or withdrawal.

Examination fees are changed to filing fees. The filing fee for an application for a permit to appropriate water for a single domestic use, for a temporary or seasonal change, or for a drought-related change is \$125. The filing fee for an application for a permit to appropriate water other than for single domestic use, an application for a permit to store water, or to change, transfer, or amend an existing water right or claim is \$250. The fee for applying for an extension of time for beginning construction work under a water right permit is changed from \$50 to \$125. The fee for preparing and issuing water right certificates is changed from \$50 to \$125. The fee for filing and recording or formal protest is changed from \$50 to \$100. Examination and determination fees (exam fees) to be paid in advance of Ecology's examination and determination are as follows:

- a fee of \$12 per one-hundredth cubic foot per second, but not less than \$1,000 and not more than \$35,000 for an application to appropriate water or for a change, transfer, or amendment of an existing water right or claimed right.
- a fee of \$5 per acre foot of active storage, but not less than \$1,000 and not more than \$35,000 for reviewing an application to store water in a reservoir or underground where the storage capacity would exceed ten acre feet in volume.
- a fee of \$4 per one-hundredth cubic foot per second, but not less than \$300 and not more than \$4,000 for reviewing and making a final decision on an application to change, transfer, or amend an existing water right or claim that was filed with and processed by a conservancy board.

Exam fees are not required for an application to process a change relating to a trust water right donation to the state; for that portion of an application for a change, transfer, or amendment for a trust water right to be used to improve instream flows or for other public purposes; a cost-reimbursement application; or an application for a secondary use permit for the use of stored water if it is filed jointly with the application to store water. These fees apply to all examinations and determinations on applications that are initiated by Ecology after January 1, 2012, including applications that have been filed with Ecology prior to January 1, 2012, but have not been processed. All of these fees must be deposited in the water rights processing account.

In making a determination of the extent and validity of a water right, Ecology may only evaluate the exercise of the water right during the most recent 20-year period. For the purposes of appeal, the 20-year review by Ecology does not alone constitute an agency action. Parties may appeal the primary action taken by Ecology. Water right determinations during a general adjudication are not limited to a 20-year review.

An exemption to relinquishment is added for a right or portion of a right that is included in a change or transfer application awaiting final determination from Ecology for that period that the application is pending. The nonuse of water is not included in calculating whether five or more years of nonuse has occurred for relinquishment purposes.

Ecology must conduct a comprehensive review of its water rights application review procedures, with the objective of simplifying the procedures, eliminating unnecessary steps, and decreasing the time required to process an application from filing through a final decision. Ecology must implement changes for which it has current administrative authority by January 1, 2012, and provide a report to the Legislature by January 1, 2012.

By January 1, 2012, Ecology must prepare preliminary assessments for each water resource inventory area (WRIAs) with pending applications for new water rights, changes, transfers, and amendments. Ecology must publish available information on its website, including the location of those applications, the factors affecting water availability, and the potential impairment of senior water rights. Ecology must gather existing information related to water availability within WRIAs where there are more than 50 applications pending and identify any information gaps that effectively block Ecology's ability to make decisions on the pending applications in those areas. Ecology must develop a strategy for addressing the pending applications in each of these WRIAs. For water sources for which Ecology determines that no water remains available for further appropriation, Ecology must deny

applications to appropriate water unless the applicant proposes a feasible mitigation plan, a storage or augmentation plan, or another resource management technique.

Appropriation: None.

Fiscal Note: Requested on April 13, 2011.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.