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SENATE BILL 6267

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State of Washington

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By Senators Rockefeller and Honeyford; by request of Department of Ecology

Read first time 01/11/10. Referred to Committee on Environment, Water & Energy.

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 a new section 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. Each  
18 applicant is responsible for any appeal costs related to the processing  
19 of his or her application.

1       (b) The requirement to pay for the cost of all other applications  
2 from the same source of supply under (a) of this subsection does not  
3 apply if:

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

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

13       (c) The department may enter into cost-reimbursement agreements in  
14 its discretion and shall use the process established under RCW  
15 43.21A.690 for entering into cost-reimbursement agreements.

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17 determine the source of water proposed to be diverted or withdrawn  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

26       (3)(a) If the department determines that the public interest is  
27 best served by initiation of a coordinated cost-reimbursement project,  
28 the department must notify in writing all persons who have pending  
29 applications on file for a new appropriation or withdrawal of water  
30 from the same source. Such a notice must be made by way of mail and by  
31 publication in a newspaper of general circulation in the area where  
32 affected properties are located. The notification must inform those  
33 applicants that a coordinated cost-reimbursement process is being  
34 initiated. The notice must offer the opportunity to voluntarily  
35 participate in funding a cost-reimbursement contractor to investigate  
36 and make recommendations to the department regarding the disposition of  
37 the applications. The notice must also provide the estimated cost for  
38 having an application processed using a cost-reimbursement contractor.

1 The notice must provide not less than sixty days for the applicants to  
2 respond in writing as to their interest in participating in the  
3 coordinated cost-reimbursement processing of their applications. The  
4 department shall adjust the estimated costs for each participant based  
5 on those applicants electing to participate. The department may  
6 initiate a coordinated cost-reimbursement project: (i) On its own  
7 volition; (ii) upon receipt of a written request from an applicant;  
8 (iii) upon receipt of a written request or recommendation from a  
9 watershed planning unit; or (iv) upon receipt of a resolution of a  
10 county legislative authority with jurisdiction over the area in which  
11 the water source is located.

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

20 (c) For any applicant who elects to not participate in the  
21 coordinated cost-reimbursement process or who fails to respond in  
22 writing within the time allowed, the department shall retain the  
23 application on file until such time as the department is able to  
24 process it. Coordinated cost reimbursement under this section applies  
25 only to the sequence of application processing and does not affect the  
26 relative priority date of any resulting water rights.

27 (4) The department shall provide notice to potential contractors of  
28 the opportunity to be considered for inclusion on the list of cost-  
29 reimbursement contractors to whom work assignments will be made. The  
30 department shall competitively select an appropriate number of  
31 contractors who are qualified by training and experience to investigate  
32 and make recommendations on the disposition of water rights  
33 applications. The contractor list must be renewed at least every six  
34 years, though the department may add qualified cost-reimbursement  
35 contractors to the list at any time. The department shall enter a  
36 master contract with each contractor selected and shall thereafter make  
37 work assignments based on availability and qualifications.

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

7       (6) When assigned an application or set of applications to  
8 investigate, the contractor must document its findings and recommended  
9 disposition in the form of written draft reports of examination. The  
10 department may modify the reports of examination submitted by the  
11 contractor. The department's decision on a permit application is final  
12 unless it is appealed to the pollution control hearings board under  
13 chapter 43.21B RCW.

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

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

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

22       (1) The department shall establish and maintain a list of certified  
23 water right examiners. Certified water right examiners on the list are  
24 eligible to perform final proof examinations of permitted water uses  
25 leading to the issuance of a water right certificate. The list must be  
26 updated annually and must be made available to the public through  
27 written and electronic media. In order to qualify for inclusion on the  
28 list, an individual must be registered in Washington as a professional  
29 engineer, professional land surveyor, or registered hydrogeologist.  
30 Qualified individuals must also pass a written examination prior to  
31 being certified by the department. Such an examination must be  
32 administered by either the department or an entity formally approved by  
33 the department. Each certified water right examiner must demonstrate  
34 knowledge and competency regarding:

35       (a) Water law in the state of Washington;

1 (b) Measurement of the flow of water through open channels and  
2 enclosed pipes;

3 (c) Water use and water level reporting;

4 (d) Estimation of the capacity of reservoirs and ponds;

5 (e) Irrigation crop water requirements;

6 (f) Aerial photo interpretation;

7 (g) Legal descriptions of land parcels;

8 (h) Location of land and water infrastructure through the use of  
9 maps and global positioning;

10 (i) Proper construction and sealing of well bores; and

11 (j) Other topics related to the preparation and certification of  
12 water rights in Washington state.

13 (2) Except as provided in subsection (7) of this section, upon  
14 completion of a water appropriation and putting water to beneficial  
15 use, in order to receive a final water right certificate, the permit  
16 holder must secure the services of a certified water right examiner who  
17 has been tested and certified by the department. The examiner shall  
18 carry out a final examination of the project to verify its completion  
19 and to determine and document for the permit holder and the department  
20 the amount of water that has been appropriated for beneficial use, the  
21 location of diversion or withdrawal and conveyance facilities, and the  
22 actual place of use. The examiner shall take measurements or make  
23 estimates of the maximum diversion or withdrawal, the capacity of water  
24 storage facilities, the acreage irrigated, the type and number of  
25 residences served, the type and number of stock watered, and other  
26 information relevant to making a final determination of the amount of  
27 water beneficially used. The examiner shall make photographs of the  
28 facilities to document the use or uses of water and the photographs  
29 must be submitted with the examiner's report to the department. The  
30 department shall specify the format and required content of the reports  
31 and may provide a form for that purpose.

32 (3) The department may suspend or revoke a certification based on  
33 poor performance, malfeasance, failure to acquire continuing education  
34 credits, or excessive complaints from the examiner's customers. The  
35 department may require the retesting of an examiner. The department  
36 may interview any examiner to determine whether the person is qualified  
37 for this work. The department shall spot check the work of examiners  
38 to ensure that the public is being competently served. Any person

1 aggrieved by an order of the department including the granting, denial,  
2 revocation, or suspension of a certificate issued by the department  
3 under this chapter may appeal pursuant to chapter 43.21B RCW.

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

7 (5) Each certified water right examiner must complete eight hours  
8 annually of qualifying continuing education in the water resources  
9 field. The department shall determine and specify the qualifying  
10 continuing education and shall inform examiners of the opportunities.  
11 The department shall track whether examiners are current in their  
12 continuing education and may suspend the certification of an examiner  
13 who has not complied with the continuing education requirement.

14 (6) Each certified water right examiner must be bonded for at least  
15 fifty thousand dollars.

16 (7) The department may waive the requirement to secure the services  
17 of a certified water right examiner in situations in which the  
18 department deems it unnecessary for purposes of issuing a certificate  
19 of water right.

20 (8) The department shall establish and collect fees for the  
21 examination, certification, and renewal of certification of water right  
22 examiners. Pursuant to RCW 43.135.055, the department is authorized to  
23 set fees for examination, certification, and renewal of certification  
24 for water right examiners.

25 (9) The department may adopt rules appropriate to carry out the  
26 purposes of this section.

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

29 (1) The department shall, when evaluating an application for a  
30 water right, transfer, or change filed pursuant to RCW 90.03.250 or  
31 90.03.380 that includes provision for any water impoundment or other  
32 resource management technique, take into consideration the benefits and  
33 costs, including environmental effects, of any water impoundment or  
34 other resource management technique that is included as a component of  
35 the application. The department's consideration shall extend to any  
36 increased water supply that results from the impoundment or other  
37 resource management technique, including but not limited to any

1 recharge of groundwater that may occur, as a means of making water  
2 available or otherwise offsetting the impact of the diversion of  
3 surface water proposed in the application for the water right,  
4 transfer, or change. Except as provided in subsection (2) of this  
5 section, provision for an impoundment or other resource management  
6 technique in an application shall be made solely at the discretion of  
7 the applicant and shall not otherwise be made by the department as a  
8 condition for approving an application that does not include such  
9 provision.

10 (2) If the department has determined by adoption of rules, order,  
11 or other appealable agency action that no water remains available for  
12 any unmitigated new appropriation from a water source, the department  
13 shall notify all persons holding pending applications to divert water  
14 from that source of the determination. Such a notice must be made by  
15 way of mail and by publication in a newspaper of general circulation in  
16 the area where affected properties are located, and must include  
17 requirements as prescribed in subsection (3) of this section.

18 (3) Within three years after the date notification is mailed, the  
19 department may issue an order requiring each applicant to amend their  
20 application to include provisions for a water impoundment or other  
21 resource management technique as provided in subsection (1) of this  
22 section that would ensure that, if the application were granted, the  
23 effects of the diversion would not impair any senior water right,  
24 adopted instream flows, or closed water sources. The department shall  
25 issue decisions on the water right applications for which proposals for  
26 impoundment or other resource management techniques are included under  
27 this subsection. The department shall issue an order denying any  
28 application for which no acceptable proposal is submitted within the  
29 three years provided. For good cause shown, including demonstrated  
30 diligence in working to identify a water impoundment or resource  
31 management technique, the department may, in response to a written  
32 request from an individual applicant, extend the time to submit the  
33 amended application required in this subsection by no more than two  
34 additional years. The department may also place pending applications  
35 for appropriation from a particular water source into project-dependent  
36 status where a proposed water supply development project or projects  
37 could feasibly make water available for such dormant applications. The  
38 department may make such a determination: (a) On its own volition; (b)

1 upon receipt of a written request or recommendation from a watershed  
2 planning unit; or (c) upon receipt of a resolution of a county  
3 legislative authority with jurisdiction over the area in which the  
4 water source is located. Pending applications in project-dependent  
5 status terminate automatically ten years after placement into such  
6 status unless extended by the department for good cause shown. In no  
7 case may the department extend project-dependent status for any dormant  
8 application by more than twenty years from the date such an application  
9 was initially placed into project-dependent status.

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

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

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

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

26 ((~~1~~)) (i) An error in estimation of the quantity of the  
27 applicant's water claim prescribed in RCW 90.14.051 if the applicant  
28 provides reasons for the failure to claim such right in the original  
29 claim;

30 ((~~2~~)) (ii) A change in circumstances not foreseeable at the time  
31 the original claim was filed, if such change in circumstances relates  
32 only to the manner of transportation or diversion of the water and not  
33 to the use or quantity of such water; or

34 ((~~3~~)) (iii) The amendment is ministerial in nature.

35 (b) The department shall accept any such submission and file the  
36 same in the registry unless the department by written determination



1 concludes that the requirements of (a)(i), (ii), or (iii) of this  
2 subsection ((~~(1), (2), or (3)~~ of this section)) have not been  
3 satisfied.

4 (2) A water right claim may be changed or amended in the same  
5 manner as a permit or certificate under RCW 90.03.380 and 90.44.100.  
6 However, RCW 90.44.100(4) applies as follows: For a water right claim,  
7 the "location of the original well or wells" is the area up to one-  
8 quarter mile radius from the current well or wells.

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

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

16 (1) The department shall, when evaluating an application for a  
17 water right or an amendment filed pursuant to RCW 90.44.050 or  
18 90.44.100 that includes provision for any water impoundment or other  
19 resource management technique, take into consideration the benefits and  
20 costs, including environmental effects, of any water impoundment or  
21 other resource management technique that is included as a component of  
22 the application. The department's consideration shall extend to any  
23 increased water supply that results from the impoundment or other  
24 resource management technique, including but not limited to any  
25 recharge of groundwater that may occur, as a means of making water  
26 available or otherwise offsetting the impact of the withdrawal of  
27 groundwater proposed in the application for the water right or  
28 amendment in the same water resource inventory area. Except as  
29 provided in subsection (2) of this section, provision for an  
30 impoundment or other resource management technique in an application  
31 shall be made solely at the discretion of the applicant and shall not  
32 be made by the department as a condition for approving an application  
33 that does not include such provision.

34 (2) If the department has determined by adoption of rules, order,  
35 or other appealable agency action that no water remains available for  
36 any unmitigated new appropriation from a water source, the department  
37 shall notify all persons holding pending applications to withdraw water

1 from that source of the determination. Such a notice must be made by  
2 way of mail and by publication in a newspaper of general circulation in  
3 the area where affected properties are located, and must include  
4 requirements as prescribed in subsection (3) of this section.

5 (3) Within three years after the date notification is mailed, the  
6 department may issue an order requiring each applicant to amend their  
7 application to include provisions for a water impoundment or other  
8 resource management technique as provided in subsection (1) of this  
9 section that would ensure that, if their application were granted, the  
10 effects of the withdrawal would not impair any senior water right,  
11 adopted instream flow, or closed water sources. The department shall  
12 issue decisions on the water right applications for which proposals for  
13 impoundment or other resource management techniques are included under  
14 this subsection. The department shall issue an order denying any  
15 application for which no proposal is submitted within the three years  
16 provided. For good cause shown, including demonstrated diligence in  
17 working to identify a water impoundment or resource management  
18 technique, the department may, in response to a written request from an  
19 individual applicant, extend the time to submit the amended application  
20 required in this subsection by no more than two additional years. The  
21 department may also place pending applications for appropriation from  
22 a particular water source into project-dependent status where a  
23 proposed water supply development project or projects could feasibly  
24 make water available for such dormant applications. The department may  
25 make such a determination: (a) On its own volition; (b) upon receipt  
26 of a written request or recommendation from a watershed planning unit;  
27 or (c) upon receipt of a resolution of a county legislative authority  
28 with jurisdiction over the area in which the water source is located.  
29 Pending applications in project-dependent status terminate  
30 automatically ten years after placement into such status unless  
31 extended by the department for good cause shown. In no case may the  
32 department extend project-dependent status for any dormant application  
33 by more than twenty years from the date such an application was  
34 initially placed into project-dependent status.

35 (4) Upon the written request of any applicant who requests it, the  
36 department shall provide a contact list of all other applicants who  
37 received notification under this subsection for purposes of enabling

1 applicants to coordinate among each other to develop plans for water  
2 impoundment or other resource management technique required by this  
3 subsection.

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

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