

2009 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: HB 2185 **STATUS:** A Engrossed
SUBJECT: Section 401 certification fees under the Federal Water Pollution Control Act
GOVERNMENT UNIT AFFECTED: Department of Environmental Quality
PREPARED BY: Dawn Farr
REVIEWED BY: Paul Siebert
DATE: April 8, 2009

	<u>2009-2011</u>	<u>2011-2013</u>
EXPENDITURES: See comments below.		
REVENUES: See comments below.		
POSITIONS / FTE: See comments below.		
EFFECTIVE DATE: January 1, 2010.		

GOVERNOR’S BUDGET: This bill is not anticipated by the Governor’s recommended budget.

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

ANALYSIS: This bill directs the Environmental Quality Commission (EQC) to establish, by rule, a schedule of fees for state certification under 33 U.S.C. 1341 of the Federal Water Pollution Control Act; directs the Department of Environmental Quality (DEQ) to authorize fees based on the nature of the underlying federal license or permit, project size, and DEQ’s incurred cost; and directs the EQC to establish, by rule, procedures for an applicant to seek review of DEQ’s fee structure.

DEQ indicates that the fiscal associated with the bill is minimal and can be assumed with existing resources based on a timeline that would postpone fee rule adoption until the 2011-13 biennium. Currently, DEQ’s statewide 401 certification program consists of two full-time positions; one is funded by General Fund and the other is intended to be funded by fees. DEQ’s estimates that fee revenue currently only funds 75% of the fee funded position, and it is this same position, that DEQ indicates will be tasked with implementing the bill. This is the primary reason that DEQ anticipates that the bill will need to be implemented over two biennia.

During the 2009-11 biennium, DEQ anticipates that existing staff will work with an Advisory Committee to develop a new 401 certification fee schedule. This work is estimated to require a combined total of three months of full-time staff work spread over the 2009-11 biennium. Associated expenditures would be \$49,793 Other Funds. As a result of taking on this work DEQ anticipates needing to reduce technical assistance and increase the number of 401 certifications that are waived which may result in a lack of adequate best management practices to protect water quality in project areas. During the 2011-13 biennium, DEQ expects to investment an additional \$101,723 in existing staff resources and a combined total of 0.48 FTE to complete EQC rule adoption. DEQ’s rules already include procedures for an

applicant to review the Department's fee determination, so adding this to the 401 certification rules is not expected to require any additional resources.

Assuming this bill goes forward, DEQ expects to withdraw Policy Option Package 127 which is included in the 2009-11 Governor's recommended budget. The package assumes increased revenue from an anticipated fee increase during the 2009-11 biennium.