

2SHB 2591 - H AMD TO H AMD (H-5500.1/10) 1379  
By Representative Morris

NOT CONSIDERED 03/11/2010

1 On page 8, after line 9 of the amendment, insert the following:

2 "Sec. 6. RCW 90.44.105 and 1997 c 446 s 1 are each amended to read  
3 as follows:

4 (1)(a) Upon the issuance by the department of an amendment to the  
5 appropriate permit or certificate of groundwater right, the holder of  
6 a valid right to withdraw public groundwaters may consolidate that  
7 right with a groundwater right exempt from the permit requirement under  
8 RCW 90.44.050, without affecting the priority of either of the water  
9 rights being consolidated.

10 (b) Such a consolidation amendment shall be issued only after  
11 publication of a notice of the application, a comment period, and a  
12 determination made by the department, in lieu of meeting the conditions  
13 required for an amendment under RCW 90.44.100, that: ~~((1))~~ (i) The  
14 exempt well either taps or is in connection with the same body of  
15 public groundwater ~~((as the well to))~~ in which the holder has or has  
16 applied to establish a water right ~~((of the exempt well is to be~~  
17 ~~consolidated))~~ to withdraw groundwater; ~~((2))~~ (ii) use of the exempt  
18 well shall be discontinued upon approval of the consolidation amendment  
19 to the permit or certificate; ~~((3))~~ (iii) legally enforceable  
20 agreements have been entered to prohibit the construction of another  
21 exempt well to serve the area previously served by the exempt well to  
22 be discontinued, and such agreements are binding upon subsequent owners  
23 of the land through appropriate binding limitations on the title to the  
24 land; ~~((4))~~ (iv) the exempt well or wells the use of which is to be  
25 discontinued will be properly decommissioned in accordance with chapter  
26 18.104 RCW and the rules of the department unless the department  
27 authorizes that the well may continue to be used for groundwater  
28 monitoring purposes; and ~~((5))~~ (v) other existing rights, including  
29 ground and surface water rights and minimum stream flows adopted by  
30 rule, shall not be impaired.

1       (c) The notice shall be published by the applicant in a newspaper  
2 of general circulation in the county or counties in which the wells for  
3 the rights to be consolidated are located once a week for two  
4 consecutive weeks. The notice must include contact information for the  
5 water system so that owners of existing exempt wells may contact the  
6 water system if interested in well consolidation. The applicant shall  
7 provide evidence of the publication of the notice to the department.  
8 The comment period shall be for thirty days beginning on the date the  
9 second notice is published.

10       (2) The amount of the water to be added to the holder's permit or  
11 certificate upon discontinuance of the exempt well shall be the average  
12 withdrawal from the well, in gallons per day, for the most recent five-  
13 year period preceding the date of the application, except that the  
14 amount shall not be less than eight hundred gallons per day for each  
15 residential connection or such alternative minimum amount as may be  
16 established by the department in consultation with the department of  
17 health, and shall not exceed five thousand gallons per day. The  
18 department shall presume that an amount identified by the applicant as  
19 being the average withdrawal from the well during the most recent five-  
20 year period is accurate if the applicant establishes that the amount  
21 identified for the use or uses of water from the exempt well is  
22 consistent with the average amount of water used for similar use or  
23 uses in the general area in which the exempt well is located. The  
24 department shall develop, in consultation with the department of  
25 health, a schedule of average household and small-area landscaping  
26 water usages in various regions of the state to aid the department and  
27 applicants in identifying average amounts used for these purposes. The  
28 presumption does not apply if the department finds credible evidence of  
29 nonuse of the well during the required period or credible evidence that  
30 the use of water from the exempt well or the intensity of the use of  
31 the land supported by water from the exempt well is substantially  
32 different than such uses in the general area in which the exempt well  
33 is located. The department shall also accord a presumption in favor of  
34 approval of such consolidation if the requirements of this subsection  
35 are met and the discontinuance of the exempt well is consistent with an  
36 adopted coordinated water system plan under chapter 70.116 RCW, an  
37 adopted comprehensive land use plan under chapter 36.70A RCW, or other  
38 comprehensive watershed management plan applicable to the area

1 containing an objective of decreasing the number of existing and newly  
2 developed small groundwater withdrawal wells. The department shall  
3 provide a priority to reviewing and deciding upon applications subject  
4 to this subsection, and shall make its decision within sixty days of  
5 the end of the comment period following publication of the notice by  
6 the applicant or within sixty days of the date on which compliance with  
7 the state environmental policy act, chapter 43.21C RCW, is completed,  
8 whichever is later. The applicant and the department may by prior  
9 mutual agreement extend the time for making a decision.

10 (3) Until December 31, 2015, if a publicly owned and operated group  
11 A or group B water system, as those terms are defined in RCW  
12 70.119A.020, in existence as of the effective date of this section,  
13 that holds a certificated right to withdraw public groundwaters is  
14 unable to serve proposed new development within or adjacent to the  
15 approved service area of the water system because it does not have  
16 adequate water rights or a sufficient number of connections, and the  
17 proposed new development would then seek to obtain water supply from  
18 the same or a connected groundwater source under the groundwater permit  
19 exemption in RCW 90.44.050, the water system may consolidate with its  
20 water right an additional quantity of water that has not yet been put  
21 to beneficial use under the permit exemption in RCW 90.44.050 and  
22 necessary to serve the proposed new development subject to the  
23 following requirements:

24 (a) The water system shall publish public notice of the intent to  
25 consolidate an exempt withdrawal in a newspaper of general circulation  
26 in the county or counties in which the water system and the proposed  
27 new development are located once a week for two consecutive weeks. The  
28 notice must include contact information for the water system so that  
29 owners of existing exempt wells may contact the water system if  
30 interested in well consolidation. The notice shall provide for a  
31 thirty-day comment period;

32 (b) The water system shall provide evidence of publication of the  
33 notice to the department, the department of health, and the local  
34 government with land use authority over the proposed new development;

35 (c) The local government with land use authority over the proposed  
36 new development shall ensure that the proposed consolidation is  
37 consistent with an adopted coordinated water system plan under chapter  
38 70.116 RCW, an adopted comprehensive land use plan under chapter 36.70A

1 RCW, or other comprehensive watershed management plan applicable to the  
2 area containing an objective of decreasing the number of existing and  
3 newly developed small groundwater withdrawal wells;

4 (d) The water system must make any necessary amendments to its  
5 water system plan and receive approval from the department of health to  
6 authorize the addition of new connections, new uses, or revise or  
7 modify the retail service area boundary;

8 (e) Legally enforceable agreements have been entered to prohibit  
9 the construction of an exempt well to serve the area of the proposed  
10 new development, and such agreements are binding upon subsequent owners  
11 of the land through appropriate binding limitations on the title to the  
12 land; and

13 (f) Compliance with the state environmental policy act, chapter  
14 43.21C RCW.

15 (4)(a) The department shall give priority to reviewing and deciding  
16 upon applications subject to subsection (3) of this section, and shall  
17 make its decision within sixty days of the date on which the department  
18 receives written notification from the applicant that the requirements  
19 in subsection (3) of this section have been completed. The department  
20 may extend the sixty-day time period by sixty days for good cause or  
21 for any period of time at the request of the applicant.

22 (b) The department shall consult with the department of health and  
23 the local government with land use authority over the proposed new  
24 development to ensure compliance with subsection (3) of this section  
25 prior to deciding upon applications.

26 (c) Prior to deciding upon applications, the department shall: (i)  
27 Review public comments; (ii) determine whether water is legally  
28 available for purposes of the consolidation; (iii) determine whether  
29 the proposed consolidation would violate any water resource management  
30 rules; and (iv) determine whether the proposed consolidation would  
31 impair existing rights, including instream flows.

32 (5) In no case may the quantity of water consolidated with the  
33 water system's water rights under subsection (3) of this section ever  
34 exceed five thousand gallons per day or the number of new connections  
35 exceed fourteen, whichever is a smaller quantity of water, and the  
36 quantity of water withdrawn must also comply with rules adopted by the  
37 department and ordinances adopted by the local government with land use  
38 authority over the proposed new development.

1       (6) The water system must separately meter both existing  
2 connections and new connections to be added under subsection (3) of  
3 this section, and may be required by the department to report meter  
4 data.

5       (7) Any letter, certificate, or other statement that water is  
6 available to serve the proposed new development utilizing the procedure  
7 in subsection (3) of this section to satisfy the water availability  
8 requirement of RCW 19.27.097 or 58.17.110 must be provided to the  
9 department, the department of health, and the local government with  
10 land use authority upon issuance by the water system.

11       (8) A water system may exercise the authority in subsection (3) of  
12 this section on multiple occasions, but only until a total of fourteen  
13 residential connections or five thousand gallons per day of water has  
14 been consolidated with the water rights of the water system as long as  
15 the water system is operational.

16       (9) After beneficial use has occurred, the water system shall  
17 submit a proof of appropriation demonstrating the actual quantity of  
18 water beneficially used in order to obtain a consolidation amendment  
19 from the department.

20       (10) Any determination by the department under this section is  
21 appealable to the pollution control hearings board under chapter 43.21B  
22 RCW."

EFFECT: Clarifies that a water system must be in existence as of the effective date of this act. Allows only water systems that have certified water rights to utilize the provisions of this act. Clarifies that the consolidation is of water not yet put to beneficial use. Extends the time period for consolidation review by the department of ecology by up to 60 days. Clarifies that the department of ecology may require reporting of meter data. Restricts the consolidation limit to the lesser of either 14 connections or 5,000 gallons per day, and clarifies that this limit extends for as long as the water system is operational.

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