

HOUSE BILL REPORT

ESSB 6402

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to the consolidation of permit exempt wells.

Brief Description: Concerning the consolidation of permit exempt wells.

Sponsors: Senate Committee on Environment, Water & Energy (originally sponsored by Senator Sheldon).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/18/10, 2/23/10 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended by House)**

- Authorizes a publicly owned and operated Group A or Group B water system to consolidate its water right with an additional 5,000 gallons of groundwater in order to serve a proposed new development, with conditions.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 13 members: Representatives Blake, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Jacks, Kretz, Liias, McCoy, Nelson, Pearson, Rolfes, Van De Wege and Warnick.

Staff: Jaclyn Ford (786-7339).

Background:

A person who holds a valid groundwater permit or certificated right may consolidate that right with a groundwater right for an exempt well. The consolidation is to be done in the form of an amendment to the permit or right issued by the Department of Ecology (DOE) and does not affect the priority of either of the rights being consolidated. Notice of an application

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for such a consolidation must be published as provided for applications for new rights to water.

To issue an amendment for the consolidation, the DOE must determine that: (1) the exempt well taps the same body of groundwater as the well governed by the permit or certificate; (2) use of the exempt well will be discontinued when the consolidation is approved; (3) legally enforceable agreements have been entered to prohibit the construction of another exempt well to serve the area previously served by the discontinued exempt well, and the agreements are binding upon subsequent owners of the land; (4) the exempt well or wells will be properly decommissioned; and (5) other existing rights will not be impaired.

The amount of the water to be added to the consolidated permit or certificate from the exempt well is the average withdrawal from the exempt well for the most recent five-year period, but no more than 5,000 gallons per day. Up to this limit, the amount is to be no less than 800 gallons per day per residential connection or an alternative minimum amount set by the DOE in consultation with the Department of Health (DOH). The DOE must presume that an amount identified by the applicant as being the average withdrawal from the well is accurate if the applicant establishes that it is consistent with average amounts of water used for similar uses in the general area of the exempt well.

The DOE must favor approval of such a consolidation if the requirements for consolidation are met and the discontinuance of the exempt well is consistent with an adopted coordinated water system plan, an adopted comprehensive land use plan, or other comprehensive watershed management plan. The DOE must give priority to reviewing and deciding applications for consolidation. It must make its decision within 60 days of the end of a 30-day comment period following the second publication of the notice by the applicant, or within 60 days of the date that compliance with the State Environmental Policy Act (SEPA) is completed, whichever is later. The applicant and the DOE may agree to extend the time for making a decision.

Summary of Amended Bill:

Consolidation may occur between a water right holder and someone using a permit exempt well if the exempt well either taps or is in connection with the same body of groundwater in which the holder has or has applied to establish a water right to withdraw groundwater, or is within the service area of an existing publicly owned Group A or Group B water system. An exempt well does not need to be decommissioned under consolidation if the exempt well is to be used as a groundwater monitoring well.

Until December 31, 2015, if a publicly owned and operated Group A or Group B water system that holds a permitted or certificated right to withdraw public groundwater is unable to serve a proposed new development because it does not have adequate water rights or a sufficient number of connections, the water system may consolidate its water right with an additional quantity of water that is necessary to serve the proposed new development.

However, consolidation of its water right is subject to the following requirements:

- the water system must publish public notice of the intent to consolidate in a newspaper once a week for two consecutive weeks;
- the water system must provide evidence of publication of the notice to the DOE, the DOH, and local government;
- the DOE must provide a 30-day review and comment period;
- the local government must ensure that the proposed consolidation is consistent with an adopted coordinated water system plan, an adopted comprehensive land use plan, or other comprehensive watershed management plan applicable to the area;
- the water system must make any necessary amendments to its water system plan and receive approval from the DOH to authorize the addition of new connections or new uses;
- agreements are made to prohibit the construction of an exempt well to serve the area of the proposed new development;
- the DOE must consult with the DOH and local government prior to deciding on applications;
- the DOE must process applications within 60 days of the end of the comment period or within 60 days of the date on which SEPA compliance is completed;
- the water system's water rights must not exceed 5,000 gallons per day or exceed 14 new connections;
- the water system must separately meter both existing connections and new connections; and
- after beneficial use has occurred, the water system must submit a proof of appropriation demonstrating the actual quantity of water beneficially used in order to obtain a consolidation amendment from the DOE.

Any determination by the DOE is appealable to the Pollution Control Hearings Board.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill allows applicants for a groundwater right to also consolidate the permit exempt well right, contains additional notice requirements, adds the requirement that the DOE, prior to deciding upon applications, must determine whether the proposed consolidation would violate any water resource management rules, and makes technical changes.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 23, 2010.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill would help water right holders. This would allow existing water supply purveyors to provide water to new developments after the purveyor has reached its capacity.

(In support with concerns) There should be additional clarity around notice. The quantity of water should be managed appropriately.

(Opposed) None.

Persons Testifying: (In support) Senator Sheldon, prime sponsor; Bill Clarke, Washington PUD Association; and Ken Slattery, Department of Ecology.

(In support with concerns) Darcy Nonemacher, American Rivers.

Persons Signed In To Testify But Not Testifying: None.