

SENATE BILL REPORT

SB 6402

As of January 28, 2010

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

Brief Description: Concerning the consolidation of permit exempt wells.

Sponsors: Senator Sheldon.

Brief History:

Committee Activity: Environment, Water & Energy: 1/27/10.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: Karen Epps (786-7424)

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 (Ecology) and does not affect the priority of either of the rights being consolidated. Notice of an application for such a consolidation must be published as provided for applications for new rights to water.

To issue an amendment for the consolidation, Ecology 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 not more than 5,000 gallons per day. Up to this limit, the amount is to be not less than 800 gallons per day per residential connection or an alternative minimum amount set by Ecology in consultation with the Department of Health. Ecology 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Ecology 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. Ecology 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 is completed, whichever is later. The applicant and Ecology may agree to extend the time for making a decision.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): If an existing publicly-owned group A water system is unable to serve proposed new development within or adjacent to the approved future service area of the group A water system because it does not have adequate water rights and the proposed new development could obtain water from a permit exempt well, then the group A water system may consolidate with its water right an additional quantity of water withdrawn under the permit exemption necessary to serve the proposed new development.

The group A water system must separately meter both the existing and new connections, obtain any necessary amendments to its water supply plan from the Department of Health to authorize the addition of new connections, and not exceed more than 5,000 gallons a day or serve more than 14 connections. A group A water system may exercise this authority on multiple occasions but only until 14 connections or 5,000 gallons per day have been consolidated. Water provided by the group A water system utilizing this consolidation procedure is granted a development schedule of five years. Within five years from the issuance of the building permit, the group A water system must submit proof of appropriation to Ecology demonstrating the quantity of water used by the new development. Ecology must issue a consolidation amendment based on the applicable provisions of the existing consolidation statute.

Appropriation: None.

Fiscal Note: Requested on January 25, 2010.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill evolved from discussions among the public utility districts (PUDs) in which there were some situations where an existing water system wanted to provide service to a new development and the new development wanted to receive service, but the PUD was at or near the capacity of its water rights. The landowner had to rely on an exempt well for water. This bill allows a group A water system to consolidate the exempt water right in order to serve the adjacent development. The concept in the bill provides various side boards so that this tool is only available if that water system

could not serve the development without the additional quantity. Additionally, the bill would require the PUD to meter the water use. There would also need to be review of impairment before the consolidation occurs. This bill is designed to allow a PUD to provide service in lieu of more exempt wells going in next door to the PUD.

CON: There are insufficient sideboards around impairment. It is unclear how the new language would work with the existing language. There needs to be clarification around how the impairment analysis would take place in this situation.

OTHER: This bill seeks to eliminate the proliferation of exempt wells. There is an advantage to having the new development hook up to the well-managed publicly-owned water system. The proliferation of small systems is a public health and environmental problem. There is concern about impairment after the development is already in place. This is an expansion of existing groundwater code. There is a lack of information that the goals that this bill puts forward will be achieved. There needs to be clarification as what quantity is included and what type of use is covered. There is confusion over the coverage area described in the bill as within or adjacent. It is important to not encourage development in an area that cannot support that development. There needs to be some way of certifying that a permit exempt well would be tapping physically and legally available water. There needs to be assurances that the development project is a genuine proposal and not a way to game the system. There would also need to be assurances that such small developments are not merely sequential and related pieces of a larger development proposal. It appears that a group A water system will only be allowed to do this for a total quantity of 5,000 gallons per day forever. It might be time to remove the current limitation that the consolidating utility have a water right for the same body of public groundwater.

Persons Testifying: PRO: Bill Clarke, John Kounts, Washington Public Utility Districts Association; Kathleen Collins, Washington Water Policy Alliance.

CON: Dawn Vyvyan, Yakama Nation.

OTHER: Denise Clifford, Department of Health; Darcy Nonemacher, American Rivers; Ken Slattery, Department of Ecology.