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SENATE BILL 6402

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State of Washington

61st Legislature

2010 Regular Session

By Senator Sheldon

Read first time 01/13/10. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to the consolidation of permit exempt wells; and  
2 amending RCW 90.44.105.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 90.44.105 and 1997 c 446 s 1 are each amended to read  
5 as follows:

6 (1) Upon the issuance by the department of an amendment to the  
7 appropriate permit or certificate of groundwater right, the holder of  
8 a valid right to withdraw public groundwaters may consolidate that  
9 right with a groundwater right exempt from the permit requirement under  
10 RCW 90.44.050, without affecting the priority of either of the water  
11 rights being consolidated. Such a consolidation amendment shall be  
12 issued only after publication of a notice of the application, a comment  
13 period, and a determination made by the department, in lieu of meeting  
14 the conditions required for an amendment under RCW 90.44.100, that:  
15 ~~((+1))~~ (a) The exempt well taps the same body of public groundwater as  
16 the well to which the water right of the exempt well is to be  
17 consolidated; ~~((+2))~~ (b) use of the exempt well shall be discontinued  
18 upon approval of the consolidation amendment to the permit or  
19 certificate; ~~((+3))~~ (c) legally enforceable agreements have been

1 entered to prohibit the construction of another exempt well to serve  
2 the area previously served by the exempt well to be discontinued, and  
3 such agreements are binding upon subsequent owners of the land through  
4 appropriate binding limitations on the title to the land; ~~((+4))~~ (d)  
5 the exempt well or wells the use of which is to be discontinued will be  
6 properly decommissioned in accordance with chapter 18.104 RCW and the  
7 rules of the department; and ~~((+5))~~ (e) other existing rights,  
8 including ground and surface water rights and minimum stream flows  
9 adopted by rule, shall not be impaired. The notice shall be published  
10 by the applicant in a newspaper of general circulation in the county or  
11 counties in which the wells for the rights to be consolidated are  
12 located once a week for two consecutive weeks. The applicant shall  
13 provide evidence of the publication of the notice to the department.  
14 The comment period shall be for thirty days beginning on the date the  
15 second notice is published.

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

1 is located. The department shall also accord a presumption in favor of  
2 approval of such consolidation if the requirements of this subsection  
3 are met and the discontinuance of the exempt well is consistent with an  
4 adopted coordinated water system plan under chapter 70.116 RCW, an  
5 adopted comprehensive land use plan under chapter 36.70A RCW, or other  
6 comprehensive watershed management plan applicable to the area  
7 containing an objective of decreasing the number of existing and newly  
8 developed small groundwater withdrawal wells. The department shall  
9 provide a priority to reviewing and deciding upon applications subject  
10 to this subsection, and shall make its decision within sixty days of  
11 the end of the comment period following publication of the notice by  
12 the applicant or within sixty days of the date on which compliance with  
13 the state environmental policy act, chapter 43.21C RCW, is completed,  
14 whichever is later. The applicant and the department may by prior  
15 mutual agreement extend the time for making a decision.

16 (3) If an existing group A water system, as that term is defined in  
17 RCW 70.119.020, is unable to serve proposed new development within or  
18 adjacent to the approved future service area of the group A water  
19 system because it does not have adequate water rights, and such  
20 proposed new development would therefore obtain water supply under the  
21 groundwater permit exemption in RCW 90.44.050, the group A water system  
22 may consolidate with its water right an additional quantity of water  
23 withdrawn under the permit exemption in RCW 90.44.050 necessary to  
24 serve the proposed new development subject to the following  
25 requirements:

26 (a) The group A water system must separately meter both existing  
27 connections and new connections to be added under this section;

28 (b) The group A water system must obtain any necessary amendments  
29 to its water supply plan from the department of health to authorize the  
30 addition of new connections;

31 (c) In no case may the quantity of water consolidated with the  
32 group A water system's water rights exceed either five thousand gallons  
33 per day or fourteen new connections;

34 (d) A group A water system may exercise the authority in this  
35 section on multiple occasions, but only until a total of fourteen  
36 residential connections or five thousand gallons per day of water has  
37 been consolidated with the water rights of the group A water system;

1       (e) Any letter, certificate, or other statement that water is  
2 available to serve the proposed new development utilizing the procedure  
3 in this subsection to satisfy the water availability requirement of RCW  
4 19.27.097 or 58.17.110 must be provided to the department of health and  
5 department of ecology upon issuance by the group A water system; and

6       (f) Water provided by a group A water system utilizing the  
7 authority in this subsection must be granted a development schedule of  
8 five years. Within five years from the issuance of the building permit  
9 authorizing construction of the proposed development, the group A water  
10 system shall submit a proof of appropriation to the department  
11 demonstrating the quantity of water used by the new development. The  
12 department shall issue a consolidation amendment based on the  
13 applicable provisions of subsections (1) and (2) of this section.

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