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SENATE BILL 5200

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State of Washington

63rd Legislature

2013 Regular Session

By Senators Hatfield and Shin

Read first time 01/23/13. Referred to Committee on Agriculture, Water & Rural Economic Development.

1 AN ACT Relating to consolidating a new exempt withdrawal of  
2 groundwater into an existing public water system; and amending RCW  
3 90.44.105.

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

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

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

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

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

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

17 (3) If a local government determines under RCW 58.17.110 or  
18 19.27.097 that potable water is legally available for single or group  
19 domestic use under RCW 90.44.050 for a proposed new development, and  
20 that the legally available water could be provided through an existing,  
21 publicly owned and operated group A or group B water system that lacks  
22 sufficient water rights for the proposed new development, the water  
23 system may consolidate with its water rights the additional quantity of  
24 water available under RCW 90.44.050 that is necessary to serve the  
25 proposed new development. The total amount of additional water  
26 consolidated into an existing water system may not exceed five thousand  
27 gallons per day. After beneficial use of the additional water has  
28 occurred, the water system may submit a proof of appropriation  
29 demonstrating the actual quantity of water beneficially used in order  
30 to obtain a consolidation amendment from the department.

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