
SUBSTITUTE SENATE BILL 5200

State of Washington

63rd Legislature

2013 Regular Session

By Senate Agriculture, Water & Rural Economic Development (originally sponsored by Senators Hatfield and Shin)

READ FIRST TIME 02/13/13.

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 or approval of a
19 consolidation under subsection (3) of this section shall be the average
20 withdrawal from the well, in gallons per day, for the most recent five-
21 year period preceding the date of the application, except that the
22 amount shall not be less than eight hundred gallons per day for each
23 residential connection or such alternative minimum amount as may be
24 established by the department in consultation with the department of
25 health, and shall not exceed five thousand gallons per day. The
26 department shall presume that an amount identified by the applicant as
27 being the average withdrawal from the well during the most recent five-
28 year period is accurate if the applicant establishes that the amount
29 identified for the use or uses of water from the exempt well is
30 consistent with the average amount of water used for similar use or
31 uses in the general area in which the exempt well is located. The
32 department shall develop, in consultation with the department of
33 health, a schedule of average household and small-area landscaping
34 water usages in various regions of the state to aid the department and
35 applicants in identifying average amounts used for these purposes. The
36 presumption does not apply if the department finds credible evidence of
37 nonuse of the well during the required period or credible evidence that
38 the use of water from the exempt well or the intensity of the use of

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

18 (3) An existing publicly owned and operated group A or group B
19 water system may serve a proposed new development with a quantity of
20 water under RCW 90.44.050 that is in addition to the water system's
21 existing water rights, but not more than five thousand gallons per day
22 for any water system, under the following conditions:

23 (a) The responsible local government determines under RCW 58.17.110
24 or 19.27.097 that potable water is legally available for single or
25 group domestic use under RCW 90.44.050 and that provision of this water
26 by the existing water system would comply with water resource rules
27 adopted by the department under chapter 90.54 RCW;

28 (b) The existing water system does not have adequate water rights
29 to serve the proposed new development and withdraws water from the same
30 body of public groundwater as would a new exempt well serving the
31 proposed new development;

32 (c) The water system is in compliance with drinking water rules
33 adopted by the department of health under RCW 43.70.040 and by the
34 state board of health under RCW 43.20.050(2)(a); and

35 (d) Within five years of providing such a water supply, the water
36 system shall comply with the applicable requirements of subsections (1)

1 and (2) of this section.

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