

HOUSE BILL REPORT

SSB 5785

As Reported By House Committee On:
Agriculture & Ecology

Title: An act relating to consolidating ground water rights of exempt wells.

Brief Description: Providing for consolidation of ground water rights of exempt wells.

Sponsors: Senate Committee on Agriculture & Environment (originally sponsored by Senators Swecker, Newhouse, Morton, Haugen and Rasmussen).

Brief History:

Committee Activity:

Agriculture & Ecology: 3/31/97, 4/3/97 [DPA].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 11 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper; Delvin; Koster; Mastin; Regala and Sump.

Staff: Kenneth Hirst (786-7105).

Background: Water Use Permits, Transfers, Changes, and Amendments. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water are established under a permit system. However, certain uses of groundwater not exceeding 5,000 gallons per day are exempted from this permit requirement. The permit system is based on the prior appropriation doctrine that "first in time is first in right." Other laws authorize the state to establish minimum flows and levels for streams and lakes. The permit system and the state's laws for managing water resources are administered by the Department of Ecology (DOE).

State law permits the use of water under a water right or portion of a water right to be transferred, changed, or amended if the transfer, change, or amendment can be made without detriment or injury to existing rights. If a change in place of use involves surface water supplied by an irrigation district and the water remains in the district, the change need be approved only by the irrigation district. Other transfers, changes, and amendments of water rights must be approved by the DOE.

Summary of Amended Bill: 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 DOE 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, 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 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 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 develop, in consultation with the DOH, a schedule of average household and small-area landscaping water usages in various regions of the state to aid in identifying average amounts used for these purposes. The presumption does not apply if the DOE finds credible evidence of non-use of the well during the required period or credible evidence that the use of water from the exempt well or the intensity of the use of the land supported by water from the exempt well is substantially different than such uses in the general area. 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 applicable to the area containing an objective of decreasing the number of existing and newly developed small ground water withdrawal wells.

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 is completed,

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

Amended Bill Compared to Substitute Bill: The amendment: (1) specifies that the consolidation is not to alter the priority of either of the rights being consolidated (not just the permitted or certificated right); (2) establishes a notice publication requirement that is the same as the publication required for an application for a water right; (3) states that the comment period referred to in the underlying bill is a 30-day period; (4) requires any alternative developed by the DOE to the 800 gallons-per-day-per-residence standard be developed in consultation with the DOH; and (5) rewords the presumption language of the underlying bill.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (1) The bill provides a voluntary means of protecting water quality and water quantity by allowing the right for an exempt well to be voluntarily consolidated with the right of a water purveyor. (2) The schedule of water uses in the bill will allow differing standards for eastern and western Washington outdoor water use.

Testimony Against: The 800 gallons per day residential standard set in the bill is high. An alternative minimum amount to be set by the DOE regarding consolidations should be set in consultation with the DOH.

Testified: Steve Lindstrom, Sno-King Water District Coalition; and Judy Turpin, Washington Environmental Council (in favor). Doug McChesney, Department of Ecology (commented on the bill).