

**SHB 1337 - H AMD 259**

By Representative Linville

ADOPTED 03/18/2003

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 90.44.100 and 1997 c 316 s 2 are each amended to read  
4 as follows:

5 (1) After an application to, and upon the issuance by the  
6 department of an amendment to the appropriate permit or certificate of  
7 ground water right, the holder of a valid right to withdraw public  
8 ground waters may, without losing the holder's priority of right,  
9 construct wells or other means of withdrawal or withdraw water under  
10 the right from an additional existing well or wells at a new location  
11 in substitution for or in addition to those at the original location,  
12 or the holder may change the manner or the place of use of the water.

13 (2) Except as provided in subsection (5) of this section, an  
14 amendment to withdraw water under the right from an additional existing  
15 well or wells, construct replacement or a new additional well or wells  
16 at a location outside of the location of the original well or wells, or  
17 to change the manner or place of use of the water shall be issued only  
18 after publication of notice of the application and findings as  
19 prescribed in the case of an original application. Such amendment  
20 shall be issued by the department only on the conditions that: (a) The  
21 additional or replacement well or wells shall ((tap the same body of  
22 public ground water)) be located within the same water resource  
23 inventory area (WRIA), as defined in chapter 173-500 WAC, as the  
24 original well or wells or in an adjoining WRIA. If a watershed plan  
25 has been approved under chapter 90.82 RCW or a comprehensive watershed  
26 plan has been adopted under RCW 90.54.040(1) for the WRIA or the  
27 adjoining WRIA or for both WRIAs, moving the location of the well or  
28 wells through construction or addition must be consistent with the plan  
29 or plans. If a ground water management program has been adopted by the

1 department under RCW 90.44.400 through 90.44.430 for the original or  
2 new location for the well or wells, moving the location of the well or  
3 wells through construction or addition must be consistent with the  
4 adopted program; (b) where a replacement well or wells is approved, the  
5 use of the original well or wells shall be discontinued and the  
6 original well or wells shall be properly decommissioned as required  
7 under chapter 18.104 RCW; (c) where an additional well or wells is  
8 added or constructed, the original well or wells may continue to be  
9 used, but the combined total withdrawal from the original and  
10 additional well or wells shall not (~~enlarge the right~~) increase the  
11 annual or instantaneous quantity conveyed by the original permit or  
12 certificate; and (d) other existing rights shall not be impaired. The  
13 department may specify an approved manner of construction and shall  
14 require a showing of compliance with the terms of the amendment, as  
15 provided in RCW 90.44.080 in the case of an original permit.

16 (3) The addition or construction of a replacement or new or  
17 existing additional well or wells at the location of the original well  
18 or wells shall be allowed without application to the department for an  
19 amendment. However, the following apply to such a replacement or new  
20 or existing additional well: (a) The well shall tap the same body of  
21 public ground water as the original well or wells; (b) if a replacement  
22 well is added or constructed, the use of the original well or wells  
23 shall be discontinued and the original well or wells shall be properly  
24 decommissioned as required under chapter 18.104 RCW; (c) if a new or  
25 existing additional well is added or constructed, the original well or  
26 wells may continue to be used, but the combined total withdrawal from  
27 the original and additional well or wells shall not (~~enlarge the~~  
28 ~~right~~) increase the annual or instantaneous quantity conveyed by the  
29 original water use permit or certificate; (d) the addition or  
30 construction and use of the well shall not interfere with or impair  
31 water rights with an earlier date of priority than the water right or  
32 rights for the original well or wells; (e) the replacement or  
33 additional well shall be located no closer than the original well to a  
34 well it might interfere with; (f) the department may specify an  
35 approved manner of construction of the well; and (g) the department  
36 shall require a showing of compliance with the conditions of this  
37 subsection (3).

1 (4) As used in this section, the "location of the original well or  
2 wells" is the larger of: (a) The area described as the point of  
3 withdrawal in the original public notice published for the application  
4 for the water right for the well; or (b) the area up to one-quarter  
5 mile radius from the current well or wells.

6 (5)(a) A water right holder may add or construct a replacement or  
7 new or existing additional well or wells at a location outside the  
8 location of the original well or wells but not more than two miles from  
9 the current well or wells without obtaining approval from the  
10 department under the following conditions:

11 (i) At least sixty days before adding or starting construction of  
12 the well or wells, the water right holder must provide written notice  
13 to the department of the intention to add or construct the replacement  
14 or additional well or wells and publish a legal notice prescribed by  
15 the department describing the location of the additional existing or  
16 proposed well or wells, the amounts of water to be withdrawn, and other  
17 details deemed necessary by the department. The notice must state that  
18 a person wishing to assert a claim of impairment of the person's water  
19 right may do so by filing the claim with the department and the  
20 deadline for doing so, which shall be within thirty days of the last  
21 date of publication of the notice. The notice must be published once  
22 a week for two consecutive weeks in a newspaper of general circulation  
23 in the area in which the well or wells would be located or added. The  
24 department must provide a copy of the notice to the tribal governments  
25 of all Indian tribes in the watershed or watersheds involved and to any  
26 planning unit conducting planning under chapter 90.82 RCW for the area  
27 and must post a copy of the notice on its internet web site. The  
28 department must file such a claim on behalf of the state if it believes  
29 any water rights held by the state would be impaired;

30 (ii) No claims of impairment of a water right are filed by the  
31 holder of the water right with the department relating to the proposed  
32 replacement or additional well or wells within thirty days of the last  
33 date of publication of the legal notice; and

34 (iii) The conditions of subsection (3)(a) through (d), (f), and (g)  
35 of this section are met.

36 (b) If a claim of impairment of a water right is timely filed by  
37 the holder of the water right with the department, the department shall  
38 make a determination regarding the impairment claim and shall issue its

1 determination in writing within ninety days of the date the claim was  
2 filed, stating either that it finds that there will be impairment (a  
3 "finding of impairment") or that it finds there will not be impairment  
4 (a "finding of no impairment"). The department's written determination  
5 or its failure to issue a determination within the ninety-day deadline  
6 may be appealed, by the claimant or by the water right holder who  
7 published notice under (a)(i) of this subsection, to the pollution  
8 control hearings board as provided in chapter 43.21B RCW.

9 (c) Where an impairment claim has been filed, a replacement well  
10 may only be added or constructed under this subsection (5) after a  
11 final resolution of the impairment claim results in a finding of no  
12 impairment. Final resolution of an impairment claim occurs at the  
13 expiration of the appeal period following a final determination by the  
14 department, the pollution control hearings board, and any reviewing  
15 court.

16 (d) The failure of the department or a person authorized to file a  
17 claim of impairment before the thirty-day deadline established in (a)  
18 of this subsection shall not be construed as precluding the department  
19 or the person from taking actions to require the discontinuance of or  
20 reduction in the withdrawal of water from the well or wells added or  
21 located and constructed under the authority of this subsection (5) if  
22 the state's or person's rights are impaired by the withdrawals."

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