

HOUSE BILL REPORT

HB 1337

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to the construction of replacement or additional wells.

Brief Description: Concerning the construction of an additional or replacement well.

Sponsors: Representatives Rockefeller, Schoesler, Lantz, Linville, Shabro, Jarrett, Kirby, Grant, Quall, Hunt, Delvin, Woods, Chandler, Morris, Conway, Bush, Anderson and Pflug; by request of Governor Locke.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/29/03, 2/4/03, 2/28/03 [DPS].

Brief Summary of Substitute Bill

- Authorizes the Department of Ecology to approve a change in the purpose of use of a ground water right, not just its manner of use.
- Authorizes changes of existing ground water rights to new locations within a water resource inventory area (WRIA) or in an adjacent WRIA, instead of new locations tapping the same water body.
- Authorizes the use of other existing wells to exercise a water right under certain circumstances.
- Expands the area in which new or replacement wells may be constructed under an existing right without a requirement that departmental approval be obtained; and identifies a new area in which new locations for wells may be authorized through a notification and publication process.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Chandler, Eickmeyer, Grant, Hunt, McDermott and Quall.

Minority Report: Do not pass. Signed by 5 members: Representatives Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen,

Assistant Ranking Minority Member; Orcutt and Sump.

Staff: Kenneth Hirst (786-7105).

Background:

Various aspects of a ground water right may be modified with the approval of the Department of Ecology (DOE) if the modifications to the right will not impair other existing water rights, the wells under the modified right tap the same ground water body as wells under the original right, and the water right is not enlarged. If a well is replaced in the process, it must be properly decommissioned. The modified right has the same date of priority as the original right. For ground water rights, these modifications are "amendments" of the rights.

Under certain circumstances, new or replacement wells may be constructed to withdraw water under the right without the holder of the right seeking the approval of the DOE. Such new or replacement wells must be constructed within an area known as the "location of the original well or wells." This is the area that was described as the point of withdrawal in the original public notice published when the original water right was applied for.

Summary of Substitute Bill:

The nature of the modifications to an existing ground water right that may be authorized under the formal procedure for amending existing ground water rights is expanded. The purpose of use of a ground water right, not just the manner of use, may be amended. The amended right need no longer tap the same ground water body; however, the wells must be within the same water resource inventory area (WRIA) as the original wells under the right, or within an adjoining WRIA. If the right is moved to an adjoining WRIA and watershed plans have been approved under the state's watershed planning laws or comprehensive watershed plans have been adopted under the Water Resources Act for either or both WRIs, moving the right to the adjoining WRIA must be consistent with those plans. In addition to constructing new wells or replacement wells for a ground water right, the point of withdrawal under the right may also be moved to another existing well. A formal amendment of the right, or a change that can be made without seeking the approval of the DOE, is prohibited from increasing the annual or instantaneous quantity of the water withdrawn, rather being prohibited from "enlarging" the water right. The "location of the original well or wells" within which such a change may currently be made without seeking the approval of the DOE is expanded. It is now either the location identified in the notice published for the original well or wells or within one-quarter mile of them, whichever area is larger.

A new procedure is set out for authorizing the new or additional wells under an existing

right in the area outside of the "location of the original well or wells" but within two miles of those wells. Under this procedure, notice must be provided to the DOE and must be published once a week for two consecutive weeks regarding the new or additional well, but the approval of the DOE is not required. Certain aspects of the changes in the right that must be contained in the notice are identified and others are to be determined by the DOE. The DOE must provide a copy of the notice to the tribal governments within the WRIsAs involved and must post the notice on its internet website. A person with a water right may assert a claim that the person's water right would be impaired by the change by filing a claim of impairment with the DOE within 30 days of the last publication of the notice. The DOE must file such a claim if it believes any water right held by the state would be impaired. The DOE must make a determination regarding each claim filed within 90 days of its filing. The DOE's determination, or its failure to make a timely determination, is appealable to the Pollution Control Hearings Board. If a claim of impairment is filed with the DOE within 30 days of the last publication of the notice, this procedure may be used only if the final resolution (administrative or judicial) of the claim results in a finding of no impairment. A person's failure to file a claim of impairment during the 30-day period does not prevent the person from later taking action to require a discontinuation of any impairment resulting from the use of the changed right.

In moving the location of the point of withdrawal of a right under this new procedure, the new or additional well is not required to remain as far away from a potentially impacted well as the original well was.

Substitute Bill Compared to Original Bill:

Added by the substitute are provisions that: allow the purpose of use of a ground water right (not just the "manner" of use) to be changed; allow the amendment process for ground water rights and the exemptions from it to be used to add a withdrawal of water under a water right from an existing well that was not the original well or wells; require any movement of the location of a well to an adjoining WRIA to be consistent with watershed plans or the WRIsAs involved, if they have been adopted. With regard to moving well locations within the two-mile radius by notice, the substitute: allows the new or added wells to be closer to other wells than the original well; permits only water right holders to file claims of impairment regarding their water rights and requires the DOE to file such a claim if it believes that a water right held by the state would be impaired; requires a copy of the notice to be sent by the DOE to the tribal governments in the WRIsAs and on the DOE's website; requires the DOE's decision regarding a claim of impairment to be issued within 90 days of the filing of the claim and allows the DOE's failure to issue a decision by this deadline to be appealed; and expressly states that a failure to file a claim of anticipated impairment during the filing period following notice is not to be construed as limiting the authority to claim actual impairment later on.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (Original bill) 1) The bill specifies that the enlargement test is actually an instantaneous and annual quantity of water test. 2) Tacoma has demonstrated that it can benefit both its water customers and the environment when given the flexibility to do so. 3) The bill both keeps things simple and reduces encumbrances.

(Commented) (Original bill) 1) The "manner of use" change allowed in groundwater amendments should be a "purpose of use" change. 2) Wells that have been encroached upon by development or are no longer productive need to be replaced.

Testimony Against: (Original bill) 1) The effects of well replacement in the entire watershed need to be considered; the provisions of the bill regarding the quantity of water that may be withdrawn and allowing wells to be moved to anywhere in the WRIA or to other WRIs do not take that into consideration. 2) Studies predict a large increase in the state's population yet less water will be available because of global warming. Often instream flows are not being met as it is. Moving a well just a few feet can cause interference problems; moving it to another watershed will cause even more. Any change in the location of a well should require a full scale review. 3) The state should be moving toward setting and meeting instream flows and making more thoughtful decisions that are consistent with this policy. The bill fails this test. 4) The public may not know that their rights will be impaired when they see the published notice.

Testified: (In support) (Original bill) Jim Waldo, Office of the Governor; Richard Price, Stevens County Public Utility District (P.U.D.); William Hahn, Kitsap P.U.D. and Washington P.U.D. Association; John Kirner, Tacoma Water Utility and Washington Water Utility Council; Tim Boyd, Columbia/Snake Irrigators Association; and Steve Lindstrom, Sno-King Water District Coalition.

(Commented) (Original bill) Cynthia First, Snohomish P.U.D.; and Dave Monthie, King County.

(Opposed) (Original bill) Denise Smith, League of Women Voters of Washington; Mason Morissat, Northwest Indian Fisheries Commission; Tim Stearns, Center for Environmental Law and Policy; Dawn Vyvyan, Yakama Nation; and Josh Baldi, Washington Environmental Council.