

HOUSE BILL REPORT

ESHB 1337

As Passed House:

March 18, 2003

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

Brief Description: Concerning additional or replacement wells.

Sponsors: By House Committee on Agriculture & Natural Resources (originally sponsored by 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].

Floor Activity:

Passed House: 3/18/03, 60-37.

Brief Summary of Engrossed Substitute Bill

- 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 Engrossed 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 altered. 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 point of withdrawal for the right is moved within the WRIA or to an adjoining WRIA, moving the location of the well must be consistent with any watershed plans that have been approved under the state's watershed planning laws or comprehensive watershed plans that have been adopted under the Water Resources Act for the area. It must also be consistent with any ground water management program that has been adopted by the DOE for the area.

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 and watershed planning units within the WRIAs 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.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: 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.