

HOUSE BILL REPORT

SSB 5023

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: Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senators Honeyford and Hale).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 3/28/03, 4/4/03 [DPA].

Brief Summary of Substitute Bill
(As Amended by House Committee)

- 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: Do pass as amended. Signed by 7 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Eickmeyer, Grant, Hunt, McDermott and Quall.

Minority Report: Do not pass. Signed by 6 members: Representatives Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, 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 Amended 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.

Amended Bill Compared to Substitute Bill:

The striking amendment: no longer allows a change in the purpose of use of an existing ground water right; and requires a change in the location of a well within a WRIA or to an adjoining WRIA to be consistent with any watershed plans or ground water management programs that have been approved or adopted for the area. Regarding the newly established procedure for moving the location of a well within two miles, the striking amendment: requires notice to be sent to tribes and planning units and to be posted on the DOE's website; requires impairment claims to be filed within 30 days (rather than 20 days); requires the DOE to examine any such claim within 90 days and prohibits the procedure from being used unless there is a finding of "no impairment" (rather than requiring the DOE to produce a technical advisory opinion, requiring attempts to resolve the claimed impairment, and allowing construction to begin in 60 days); states that a failure to file a claim of potential impairment in the 30 day period does not preclude a claim of actual impairment later; and no longer prohibits the new well location to be any closer to potentially impacted wells than the original well.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: (Original bill) (1) This Senate version of the bill will allow the movement of well locations to take place more quickly than the House version, which is important when pollution threatens the use of a well. (2) By allowing a change in the purpose of use of a ground water right, the bill treats surface and ground water equally. (3) This Senate version of this bill allows the DOE to provide technical advise and the parties to negotiate, rather than sending a dispute to the courts.

Testimony Against: (Original bill) (1) Changing the location of a well by up to two miles will have wide impact. (2) The House version of this bill is preferred; it requires a change in the location of a well to be consistent with watershed and ground water management plans and programs. (3) The bill allows a change in the purpose of use of a ground water right; the Supreme Court viewed the current limitation as being an important obstacle to speculating in water.

Testified: (In support) Senator Honeyford, prime sponsor; Bill Hahn, Washington Public Utility Districts (PUDs) Association and Kitsap County PUD; and Scott Hazelgrove, Washington Association of Sewer and Water Districts.

(Opposed) Steve Wehrly, Muckelshoot Tribe; and Josh Baldi, Washington Environmental Council.