

SENATE BILL REPORT

SB 5145

As Reported By Senate Committee On:
Natural Resources, Energy & Water, February 19, 2003

Title: An act relating to withdrawals of public ground waters.

Brief Description: Concerning withdrawals of public ground waters.

Sponsors: Senators Mulliken and T. Sheldon.

Brief History:

Committee Activity: Natural Resources, Energy & Water: 1/28/03, 2/19/03 [DPS, DNP].

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Majority Report: That Substitute Senate Bill No. 5145 be substituted therefor, and the substitute bill do pass.

Signed by Senators Morton, Chair; Hewitt, Vice Chair; Hale, Hargrove, Honeyford and Oke.

Minority Report: Do not pass.

Signed by Senators Doumit, Fraser and Regala.

Staff: Evan Sheffels (786-7486)

Background: With the exception of several exempt uses, Washington's current groundwater statute (RCW 90.44.050) prohibits the withdrawal of public groundwater unless a permit has been granted by the Department of Ecology (DOE). Washington's permit system is based on the prior appropriation doctrine that "first in time is first in right." Under the statute, exempt wells are entitled to water rights equal to those for which DOE permits are issued. Owners of exempt use wells may apply for a permit, but they are not required to do so. Exempt uses include: (1) stockwatering purposes; (2) watering a lawn or noncommercial garden up to one-half acre; (3) single or group domestic uses of up to 5,000 gallons per day; and, (4) an industrial use not to exceed 5,000 gallons per day.

In the 2002 case of *Ecology vs. Campbell and Gwinn* (43 P.3d 4), the Washington State Supreme Court substantively agreed with a 1997 Attorney General Opinion on the application of the domestic use exemption in a development context. The court concluded that the permit exemption for single or group domestic uses up to 5,000 gallons per day does not apply to a group of wells constructed by a developer as part of a single development because the total withdrawal from the combined wells in the development would exceed 5,000 gallons per day. Under the decision, a developer may not claim multiple exemptions on behalf of future homeowners who would qualify for such an exemption on their own.

Summary of Substitute Bill: RCW 90.44.050 is amended with a new section that adds a definition for single or group domestic uses to the definition section of the groundwater code,

RCW 90.44.035. "Single or group domestic use" is defined to mean any beneficial use of groundwater for individual home sites, regardless of whether the homesite was or is to be developed individually or as part of a larger project, and regardless of whether the means of withdrawal is shared with other homesites.

Substitute Bill Compared to Original Bill: Under the original bill, after the phrase exempting "an industrial purpose in an amount not exceeding 5,000 gallons a day," the modifying phrase "per residence" was added.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: In many areas of the state, exempt wells are the only mechanism available for development, especially rural areas. Restrictions after the *Campbell and Gwinn* case make it hard for counties to plan under GMA potable water availability requirements. These exempt withdrawals are typically very small, especially in relation to other withdrawals. Impairment protections remain in force.

Testimony Against: This bill expands ground water withdrawal exemptions and will result in less flow in-stream. The accepted norm is 200-400 gallons per day for a typical household. The current 5,000 gallon per day exemption limit is too high.

Testified: Steve Iverson, Muckelshoot (con); Larry Stout, Realtors (pro); Kris Tefft, BIAW (pro); Josh Baldi, WEC (con); Dawn Vyvyan, Yakama Nation (con); Kevin Lyon, Squaxin Island, NWIFC (con).