

SENATE BILL REPORT

SB 5334

As of January 30, 2003

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

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

Sponsors: Senators Honeyford, Hale, Parlette, B. Sheldon, Hewitt and T. Sheldon; by request of Governor Locke.

Brief History:

Committee Activity: Natural Resources, Energy & Water: 1/28/03.

SENATE COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER

Staff: Evan Sheffels (786-7486)

Background: RCW 90.44.100 pertains to amendments to ground water permits and certificates. Certain changes are allowed without applying for an amendment. For other changes, an amendment is required. A number of conditions apply requiring that the combined effect of replacement or additional wells is no greater than the effect of the original well: the same body of public ground water must be tapped, replaced wells must be decommissioned, and new wells must be constructed in the manner specified by the Department of Ecology (DOE). In addition, the combined effect of all original, replacement, and additional wells must not enlarge the original water right.

Ground Water Right Changes Requiring Application for Amendment--Current Law. Existing law allows amendments to change well locations, the manner of use, and/or the place of use of the water. Prior to amending a ground water permit or certificate, DOE must determine that the combined effect of the original well, plus any replacement, additional or redundancy wells, meets the requirements for an issuance of an original water right.

Changes Allowed Without Applying for an Amendment--Current Law. Existing law allows construction of a replacement or an additional well without applying for an amendment to the water right permit or certificate only if it is constructed at the same location as the original well. The original location is determined by the legal description provided in the original water right application.

Summary of Bill: Changes to Ground Water Rights Allowed Through the Amendment Process. DOE may issue amendments where a different body of public ground water is tapped so long as any replacement or additional well is located within the same water resource inventory area (WRIA), or an adjoining WRIA, as the original well. Current language prohibiting amendments that result in an enlargement of the original right is replaced with language prohibiting amendments that result in an increase in the annual or instantaneous quantity of the original right.

Changes Allowed Without Application for Amendment. With regard to the construction of replacement or additional wells without application for amendment, water rights holders are permitted to construct replacement or additional wells up to one-quarter mile from the old well-head without applying for an amendment to the water right certificate or permit. If the point-of- withdrawal described in the original application's public notice describes a larger radius, placement is allowed according to the terms of that notice. In addition, water rights holders are permitted to construct replacement or additional wells up to two miles from the old well-head without applying for an amendment, subject to a requirement that a legal notice must be published in a newspaper of general circulation according to department-prescribed procedures. Other water right holders have 30 days after final publication to file claims of impairment with the department. Before construction of a replacement or additional well more than one-quarter mile but no more than two miles from the original well head (or as described in the original notice) may begin, a written determination from the department, or alternatively from the Pollution Control Hearings Board or a reviewing court, must find "no impairment."

Current statutory conditions remain to ensure that existing rights are not impaired. The combined effect of such new wells must be no greater than the effect of the original well. As in current law, the department requires a showing of compliance with the following conditions: the same body of public ground water must be tapped; replaced wells must be decommissioned; new wells must be constructed in the manner specified by the department; and the replacement or additional well must not be closer to a well it might interfere with than the original well. Current language prohibiting amendments that result in the enlargement of the original right is replaced with language prohibiting amendments that result in an increase in the annual or instantaneous quantity of the original water right.

Appropriation: None.

Fiscal Note: Requested on January 22, 2003.

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

Testimony For: This bill provides an opportunity to create flexibility in the implementation of watershed planning while providing significant protections against impairment of others' water rights.

Testimony Against: Tribes oppose this bill because it doesn't protect in-stream flows. Impairment analysis should not be shifted from state to the public, as the bill would allow.

Testified: William Hahn, PUD Assn. Water Comm., Kitsap PUD (pro w/concerns); John Kirner, Tacoma Water WWUC (pro); Kevin Lyon, Squaxin Island Tribe and NWIFC (con); Josh Baldi, WEC (con); Scott Hazelgrove, WA Assn. of Sewer and Water Districts (pro); Jim Waldo, Governor's office (pro); Kathleen Collins, Washington Water Policy Alliance (pro w/suggestions).