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**SUBSTITUTE HOUSE BILL 1337**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**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)

READ FIRST TIME 03/04/03.

1       AN ACT Relating to the construction of replacement or additional  
2 wells; and amending RCW 90.44.100.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4       **Sec. 1.** RCW 90.44.100 and 1997 c 316 s 2 are each amended to read  
5 as follows:

6       (1) After an application to, and upon the issuance by the  
7 department of an amendment to the appropriate permit or certificate of  
8 ground water right, the holder of a valid right to withdraw public  
9 ground waters may, without losing the holder's priority of right,  
10 construct wells or other means of withdrawal or withdraw water under  
11 the right from an additional existing well or wells at a new location  
12 in substitution for or in addition to those at the original location,  
13 or the holder may change the ((~~manner~~)) purpose or the place of use of  
14 the water.

15       (2) Except as provided in subsection (5) of this section, an  
16 amendment to withdraw water under the right from an additional existing  
17 well or wells, construct replacement or a new additional well or wells  
18 at a location outside of the location of the original well or wells, or  
19 to change the ((~~manner~~)) purpose or place of use of the water shall be

1 issued only after publication of notice of the application and findings  
2 as prescribed in the case of an original application. Such amendment  
3 shall be issued by the department only on the conditions that: (a) The  
4 additional or replacement well or wells shall (~~tap the same body of~~  
5 ~~public ground water~~) be located within the same water resource  
6 inventory area (WRIA), as defined in chapter 173-500 WAC, as the  
7 original well or wells or in an adjoining WRIA. If a watershed plan  
8 has been approved under chapter 90.82 RCW or a comprehensive watershed  
9 plan has been adopted under RCW 90.54.040(1) for the WRIA or the  
10 adjoining WRIA or for both WRIA's, locating the well or wells in the  
11 adjoining WRIA must be consistent with the plan or plans; (b) where a  
12 replacement well or wells is approved, the use of the original well or  
13 wells shall be discontinued and the original well or wells shall be  
14 properly decommissioned as required under chapter 18.104 RCW; (c) where  
15 an additional well or wells is added or constructed, the original well  
16 or wells may continue to be used, but the combined total withdrawal  
17 from the original and additional well or wells shall not (~~enlarge the~~  
18 ~~right~~) increase the annual or instantaneous quantity conveyed by the  
19 original permit or certificate; and (d) other existing rights shall not  
20 be impaired. The department may specify an approved manner of  
21 construction and shall require a showing of compliance with the terms  
22 of the amendment, as provided in RCW 90.44.080 in the case of an  
23 original permit.

24 (3) The addition or construction of a replacement or new or  
25 existing additional well or wells at the location of the original well  
26 or wells shall be allowed without application to the department for an  
27 amendment. However, the following apply to such a replacement or new  
28 or existing additional well: (a) The well shall tap the same body of  
29 public ground water as the original well or wells; (b) if a replacement  
30 well is added or constructed, the use of the original well or wells  
31 shall be discontinued and the original well or wells shall be properly  
32 decommissioned as required under chapter 18.104 RCW; (c) if a new or  
33 existing additional well is added or constructed, the original well or  
34 wells may continue to be used, but the combined total withdrawal from  
35 the original and additional well or wells shall not (~~enlarge the~~  
36 ~~right~~) increase the annual or instantaneous quantity conveyed by the  
37 original water use permit or certificate; (d) the addition or  
38 construction and use of the well shall not interfere with or impair

1 water rights with an earlier date of priority than the water right or  
2 rights for the original well or wells; (e) the replacement or  
3 additional well shall be located no closer than the original well to a  
4 well it might interfere with; (f) the department may specify an  
5 approved manner of construction of the well; and (g) the department  
6 shall require a showing of compliance with the conditions of this  
7 subsection (3).

8 (4) As used in this section, the "location of the original well or  
9 wells" is the larger of: (a) The area described as the point of  
10 withdrawal in the original public notice published for the application  
11 for the water right for the well; or (b) the area up to one-quarter  
12 mile radius from the current well or wells.

13 (5)(a) A water right holder may add or construct a replacement or  
14 new or existing additional well or wells at a location outside the  
15 location of the original well or wells but not more than two miles from  
16 the current well or wells without obtaining approval from the  
17 department under the following conditions:

18 (i) At least sixty days before adding or starting construction of  
19 the well or wells, the water right holder must provide written notice  
20 to the department of the intention to add or construct the replacement  
21 or additional well or wells and publish a legal notice prescribed by  
22 the department describing the location of the additional existing or  
23 proposed well or wells, the amounts of water to be withdrawn, and other  
24 details deemed necessary by the department. The notice must state that  
25 a person wishing to assert a claim of impairment of the person's water  
26 right may do so by filing the claim with the department and the  
27 deadline for doing so, which shall be within thirty days of the last  
28 date of publication of the notice. The notice must be published once  
29 a week for two consecutive weeks in a newspaper of general circulation  
30 in the area in which the well or wells would be located or added. The  
31 department must provide a copy of the notice to the tribal governments  
32 of all Indian tribes in the watershed or watersheds involved and must  
33 post a copy of the notice on its internet web site. The department  
34 must file such a claim on behalf of the state if it believes any water  
35 rights held by the state would be impaired;

36 (ii) No claims of impairment of a water right are filed by the  
37 holder of the water right with the department relating to the proposed

1 replacement or additional well or wells within thirty days of the last  
2 date of publication of the legal notice; and

3 (iii) The conditions of subsection (3)(a) through (d), (f), and (g)  
4 of this section are met.

5 (b) If a claim of impairment of a water right is timely filed by  
6 the holder of the water right with the department, the department shall  
7 make a determination regarding the impairment claim and shall issue its  
8 determination in writing within ninety days of the date the claim was  
9 filed, stating either that it finds that there will be impairment (a  
10 "finding of impairment") or that it finds there will not be impairment  
11 (a "finding of no impairment"). The department's written determination  
12 or its failure to issue a determination within the ninety-day deadline  
13 may be appealed, by the claimant or by the water right holder who  
14 published notice under (a)(i) of this subsection, to the pollution  
15 control hearings board as provided in chapter 43.21B RCW.

16 (c) Where an impairment claim has been filed, a replacement well  
17 may only be added or constructed under this subsection (5) after a  
18 final resolution of the impairment claim results in a finding of no  
19 impairment. Final resolution of an impairment claim occurs at the  
20 expiration of the appeal period following a final determination by the  
21 department, the pollution control hearings board, and any reviewing  
22 court.

23 (d) The failure of the department or a person authorized to file a  
24 claim of impairment before the thirty-day deadline established in (a)  
25 of this subsection shall not be construed as precluding the department  
26 or the person from taking actions to require the discontinuance of or  
27 reduction in the withdrawal of water from the well or wells added or  
28 located and constructed under the authority of this subsection (5) if  
29 the state's or person's rights are impaired by the withdrawals.

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