

SSB 6402 - S AMD 133

By Senator Rockefeller

ADOPTED AS AMENDED 02/16/2010

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 90.44.105 and 1997 c 446 s 1 are each amended to read  
4 as follows:

5 (1)(a) Upon the issuance by the department of an amendment to the  
6 appropriate permit or certificate of groundwater right, the holder of  
7 a valid right to withdraw public groundwaters may consolidate that  
8 right with a groundwater right exempt from the permit requirement under  
9 RCW 90.44.050, without affecting the priority of either of the water  
10 rights being consolidated.

11 (b) Such a consolidation amendment shall be issued only after  
12 publication of a notice of the application, a comment period, and a  
13 determination made by the department, in lieu of meeting the conditions  
14 required for an amendment under RCW 90.44.100, that: ~~((+1))~~ (i) The  
15 exempt well either taps or is in connection with the same body of  
16 public groundwater ~~((as the well to))~~ in which the holder has a water  
17 right ~~((of the exempt well is to be consolidated))~~ to withdraw  
18 groundwater; ~~((+2))~~ (ii) use of the exempt well shall be discontinued  
19 upon approval of the consolidation amendment to the permit or  
20 certificate; ~~((+3))~~ (iii) legally enforceable agreements have been  
21 entered to prohibit the construction of another exempt well to serve  
22 the area previously served by the exempt well to be discontinued, and  
23 such agreements are binding upon subsequent owners of the land through  
24 appropriate binding limitations on the title to the land; ~~((+4))~~ (iv)  
25 the exempt well or wells the use of which is to be discontinued will be  
26 properly decommissioned in accordance with chapter 18.104 RCW and the  
27 rules of the department unless the department authorizes that the well  
28 may continue to be used for groundwater monitoring purposes; and  
29 ~~((+5))~~ (v) other existing rights, including ground and surface water  
30 rights and minimum stream flows adopted by rule, shall not be impaired.

1       (c) The notice shall be published by the applicant in a newspaper  
2 of general circulation in the county or counties in which the wells for  
3 the rights to be consolidated are located once a week for two  
4 consecutive weeks. The applicant shall provide evidence of the  
5 publication of the notice to the department. The comment period shall  
6 be for thirty days beginning on the date the second notice is  
7 published.

8       (2) The amount of the water to be added to the holder's permit or  
9 certificate upon discontinuance of the exempt well shall be the average  
10 withdrawal from the well, in gallons per day, for the most recent five-  
11 year period preceding the date of the application, except that the  
12 amount shall not be less than eight hundred gallons per day for each  
13 residential connection or such alternative minimum amount as may be  
14 established by the department in consultation with the department of  
15 health, and shall not exceed five thousand gallons per day. The  
16 department shall presume that an amount identified by the applicant as  
17 being the average withdrawal from the well during the most recent five-  
18 year period is accurate if the applicant establishes that the amount  
19 identified for the use or uses of water from the exempt well is  
20 consistent with the average amount of water used for similar use or  
21 uses in the general area in which the exempt well is located. The  
22 department shall develop, in consultation with the department of  
23 health, a schedule of average household and small-area landscaping  
24 water usages in various regions of the state to aid the department and  
25 applicants in identifying average amounts used for these purposes. The  
26 presumption does not apply if the department finds credible evidence of  
27 nonuse of the well during the required period or credible evidence that  
28 the use of water from the exempt well or the intensity of the use of  
29 the land supported by water from the exempt well is substantially  
30 different than such uses in the general area in which the exempt well  
31 is located. The department shall also accord a presumption in favor of  
32 approval of such consolidation if the requirements of this subsection  
33 are met and the discontinuance of the exempt well is consistent with an  
34 adopted coordinated water system plan under chapter 70.116 RCW, an  
35 adopted comprehensive land use plan under chapter 36.70A RCW, or other  
36 comprehensive watershed management plan applicable to the area  
37 containing an objective of decreasing the number of existing and newly  
38 developed small groundwater withdrawal wells. The department shall

1 provide a priority to reviewing and deciding upon applications subject  
2 to this subsection, and shall make its decision within sixty days of  
3 the end of the comment period following publication of the notice by  
4 the applicant or within sixty days of the date on which compliance with  
5 the state environmental policy act, chapter 43.21C RCW, is completed,  
6 whichever is later. The applicant and the department may by prior  
7 mutual agreement extend the time for making a decision.

8 (3) Outside the Yakima basin and until December 31, 2015, if an  
9 existing, publicly owned and operated group A or group B water system,  
10 as those terms are defined in RCW 70.119A.020, that holds a permitted  
11 or certificated right to withdraw public groundwaters is unable to  
12 serve proposed new development within or adjacent to the approved  
13 service area of the water system because it does not have adequate  
14 water rights or a sufficient number of connections, and the proposed  
15 new development would then seek to obtain water supply under the  
16 groundwater permit exemption in RCW 90.44.050, the water system may  
17 consolidate with its water right an additional quantity of water  
18 authorized to be withdrawn under the permit exemption in RCW 90.44.050  
19 and necessary to serve the proposed new development subject to the  
20 following requirements:

21 (a) The water system shall publish public notice of the intent to  
22 consolidate an exempt withdrawal in a newspaper of general circulation  
23 in the county or counties in which the water system and the proposed  
24 new development are located once a week for two consecutive weeks;

25 (b) The water system shall provide evidence of publication of the  
26 notice to the department, the department of health, and the local  
27 government with land use authority over the proposed new development;

28 (c) Upon the date of receipt by the department of evidence of the  
29 notice of publication from the water system, a thirty-day review and  
30 comment period shall exist during which the department shall: (i)  
31 Review public comments; (ii) determine whether water is legally  
32 available for purposes of the consolidation; and (iii) determine  
33 whether the proposed consolidation would impair existing rights  
34 including instream flows;

35 (d) The local government with land use authority over the proposed  
36 new development shall ensure that the proposed consolidation is  
37 consistent with an adopted coordinated water system plan under chapter  
38 70.116 RCW, an adopted comprehensive land use plan under chapter 36.70A

1 RCW, or other comprehensive watershed management plan applicable to the  
2 area containing an objective of decreasing the number of existing and  
3 newly developed small groundwater withdrawal wells;

4 (e) The water system must make any necessary amendments to its  
5 water system plan and receive approval from the department of health to  
6 authorize the addition of new connections, new uses, or revise or  
7 modify the retail service area boundary;

8 (f) Legally enforceable agreements have been entered to prohibit  
9 the construction of an exempt well to serve the area of the proposed  
10 new development, and such agreements are binding upon subsequent owners  
11 of the land through appropriate binding limitations on the title to the  
12 land;

13 (g) The department shall consult with the department of health and  
14 the local government with land use authority over the proposed new  
15 development to ensure compliance with this subsection prior to deciding  
16 upon applications subject to this subsection;

17 (h) The department shall provide a priority to reviewing and  
18 deciding upon applications subject to this subsection, and shall make  
19 its decision within sixty days of the end of the comment period  
20 following publication of the notice by the applicant or within sixty  
21 days of the date on which compliance with the state environmental  
22 policy act, chapter 43.21C RCW, is completed, whichever is later,  
23 except that the department may extend the sixty-day time period by  
24 forty-five days for good cause or for any period of time at the request  
25 of the applicant;

26 (i) In no case may the quantity of water consolidated with the  
27 water system's water rights exceed five thousand gallons per day or the  
28 number of new connections exceed fourteen, and the quantity of water  
29 withdrawn must also comply with rules adopted by the department and  
30 ordinances adopted by the local government with land use authority over  
31 the proposed new development;

32 (j) The water system must separately meter both existing  
33 connections and new connections to be added under this section;

34 (k) Any letter, certificate, or other statement that water is  
35 available to serve the proposed new development utilizing the procedure  
36 in this subsection to satisfy the water availability requirement of RCW  
37 19.27.097 or 58.17.110 must be provided to the department, the

1 department of health, and the local government with land use authority  
2 upon issuance by the water system;

3 (l) A water system may exercise the authority in this section on  
4 multiple occasions, but only until a total of fourteen residential  
5 connections or five thousand gallons per day of water has been  
6 consolidated with the water rights of the water system; and

7 (m) After beneficial use has occurred, the water system shall  
8 submit a proof of appropriation demonstrating the actual quantity of  
9 water beneficially used in order to obtain a consolidation amendment  
10 from the department.

11 (4) Any determination by the department under this section is  
12 appealable to the pollution control hearings board under chapter 43.21B  
13 RCW."

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14 On page 1, line 1 of the title, after "wells;" strike the remainder  
15 of the title and insert "and amending RCW 90.44.105."

**EFFECT:** Clarifies the types of group A and group B water systems that may consolidate an exempt well. Provides that consolidations between water systems and proposed new development cannot occur in the Yakima basin. Provides that the withdrawal must comply with rules adopted by the department of ecology and ordinances adopted by the local government where the proposed new development is located. Allows the department of ecology to extend the time period for an additional forty-five days under which a decision on the consolidation amendment must be reached. Requires the water system to submit a proof of appropriation demonstrating the actual quantity of water beneficially used in order to obtain a consolidation amendment.

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