
ENGROSSED SUBSTITUTE SENATE BILL 6402

State of Washington

61st Legislature

2010 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senator Sheldon)

READ FIRST TIME 02/03/10.

1 AN ACT Relating to the consolidation of permit exempt wells; and
2 amending RCW 90.44.105.

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

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

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

12 (b) Such a consolidation amendment shall be issued only after
13 publication of a notice of the application, a comment period, and a
14 determination made by the department, in lieu of meeting the conditions
15 required for an amendment under RCW 90.44.100, that: ~~((+1))~~ (i) The
16 exempt well either taps or is in connection with the same body of
17 public groundwater ~~((as the well to))~~ in which the holder has a water
18 right ~~((of the exempt well is to be consolidated))~~ to withdraw
19 groundwater; ~~((+2))~~ (ii) use of the exempt well shall be discontinued

1 upon approval of the consolidation amendment to the permit or
2 certificate; ~~((3))~~ (iii) legally enforceable agreements have been
3 entered to prohibit the construction of another exempt well to serve
4 the area previously served by the exempt well to be discontinued, and
5 such agreements are binding upon subsequent owners of the land through
6 appropriate binding limitations on the title to the land; ~~((4))~~ (iv)
7 the exempt well or wells the use of which is to be discontinued will be
8 properly decommissioned in accordance with chapter 18.104 RCW and the
9 rules of the department unless the department authorizes that the well
10 may continue to be used for groundwater monitoring purposes; and
11 ~~((5))~~ (v) other existing rights, including ground and surface water
12 rights and minimum stream flows adopted by rule, shall not be impaired.

13 (c) The notice shall be published by the applicant in a newspaper
14 of general circulation in the county or counties in which the wells for
15 the rights to be consolidated are located once a week for two
16 consecutive weeks. The applicant shall provide evidence of the
17 publication of the notice to the department. The comment period shall
18 be for thirty days beginning on the date the second notice is
19 published.

20 (2) The amount of the water to be added to the holder's permit or
21 certificate upon discontinuance of the exempt well shall be the average
22 withdrawal from the well, in gallons per day, for the most recent five-
23 year period preceding the date of the application, except that the
24 amount shall not be less than eight hundred gallons per day for each
25 residential connection or such alternative minimum amount as may be
26 established by the department in consultation with the department of
27 health, and shall not exceed five thousand gallons per day. The
28 department shall presume that an amount identified by the applicant as
29 being the average withdrawal from the well during the most recent five-
30 year period is accurate if the applicant establishes that the amount
31 identified for the use or uses of water from the exempt well is
32 consistent with the average amount of water used for similar use or
33 uses in the general area in which the exempt well is located. The
34 department shall develop, in consultation with the department of
35 health, a schedule of average household and small-area landscaping
36 water usages in various regions of the state to aid the department and
37 applicants in identifying average amounts used for these purposes. The
38 presumption does not apply if the department finds credible evidence of

1 nonuse of the well during the required period or credible evidence that
2 the use of water from the exempt well or the intensity of the use of
3 the land supported by water from the exempt well is substantially
4 different than such uses in the general area in which the exempt well
5 is located. The department shall also accord a presumption in favor of
6 approval of such consolidation if the requirements of this subsection
7 are met and the discontinuance of the exempt well is consistent with an
8 adopted coordinated water system plan under chapter 70.116 RCW, an
9 adopted comprehensive land use plan under chapter 36.70A RCW, or other
10 comprehensive watershed management plan applicable to the area
11 containing an objective of decreasing the number of existing and newly
12 developed small groundwater withdrawal wells. The department shall
13 provide a priority to reviewing and deciding upon applications subject
14 to this subsection, and shall make its decision within sixty days of
15 the end of the comment period following publication of the notice by
16 the applicant or within sixty days of the date on which compliance with
17 the state environmental policy act, chapter 43.21C RCW, is completed,
18 whichever is later. The applicant and the department may by prior
19 mutual agreement extend the time for making a decision.

20 (3) Until December 31, 2015, if an existing, publicly owned and
21 operated group A or group B water system, as those terms are defined in
22 RCW 70.119A.020, that holds a permitted or certificated right to
23 withdraw public groundwaters is unable to serve proposed new
24 development within or adjacent to the approved service area of the
25 water system because it does not have adequate water rights or a
26 sufficient number of connections, and the proposed new development
27 would then seek to obtain water supply under the groundwater permit
28 exemption in RCW 90.44.050, the water system may consolidate with its
29 water right an additional quantity of water authorized to be withdrawn
30 under the permit exemption in RCW 90.44.050 and necessary to serve the
31 proposed new development subject to the following requirements:

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

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

1 (c) Upon the date of receipt by the department of evidence of the
2 notice of publication from the water system, a thirty-day review and
3 comment period shall exist during which the department shall: (i)
4 Review public comments; (ii) determine whether water is legally
5 available for purposes of the consolidation; and (iii) determine
6 whether the proposed consolidation would impair existing rights
7 including instream flows;

8 (d) The local government with land use authority over the proposed
9 new development shall ensure that the proposed consolidation is
10 consistent with an adopted coordinated water system plan under chapter
11 70.116 RCW, an adopted comprehensive land use plan under chapter 36.70A
12 RCW, or other comprehensive watershed management plan applicable to the
13 area containing an objective of decreasing the number of existing and
14 newly developed small groundwater withdrawal wells;

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

19 (f) Legally enforceable agreements have been entered to prohibit
20 the construction of an exempt well to serve the area of the proposed
21 new development, and such agreements are binding upon subsequent owners
22 of the land through appropriate binding limitations on the title to the
23 land;

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

28 (h) The department shall provide a priority to reviewing and
29 deciding upon applications subject to this subsection, and shall make
30 its decision within sixty days of the end of the comment period
31 following publication of the notice by the applicant or within sixty
32 days of the date on which compliance with the state environmental
33 policy act, chapter 43.21C RCW, is completed, whichever is later,
34 except that the department may extend the sixty-day time period by
35 forty-five days for good cause or for any period of time at the request
36 of the applicant;

37 (i) In no case may the quantity of water consolidated with the
38 water system's water rights exceed five thousand gallons per day or the

1 number of new connections exceed fourteen, and the quantity of water
2 withdrawn must also comply with rules adopted by the department and
3 ordinances adopted by the local government with land use authority over
4 the proposed new development;

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

7 (k) Any letter, certificate, or other statement that water is
8 available to serve the proposed new development utilizing the procedure
9 in this subsection to satisfy the water availability requirement of RCW
10 19.27.097 or 58.17.110 must be provided to the department, the
11 department of health, and the local government with land use authority
12 upon issuance by the water system;

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

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

21 (4) Any determination by the department under this section is
22 appealable to the pollution control hearings board under chapter 43.21B
23 RCW.

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