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**SUBSTITUTE SENATE BILL 6402**

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**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 or is within the service area of an existing publicly owned

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

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

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

1 applicants in identifying average amounts used for these purposes. The  
2 presumption does not apply if the department finds credible evidence of  
3 nonuse of the well during the required period or credible evidence that  
4 the use of water from the exempt well or the intensity of the use of  
5 the land supported by water from the exempt well is substantially  
6 different than such uses in the general area in which the exempt well  
7 is located. The department shall also accord a presumption in favor of  
8 approval of such consolidation if the requirements of this subsection  
9 are met and the discontinuance of the exempt well is consistent with an  
10 adopted coordinated water system plan under chapter 70.116 RCW, an  
11 adopted comprehensive land use plan under chapter 36.70A RCW, or other  
12 comprehensive watershed management plan applicable to the area  
13 containing an objective of decreasing the number of existing and newly  
14 developed small groundwater withdrawal wells. The department shall  
15 provide a priority to reviewing and deciding upon applications subject  
16 to this subsection, and shall make its decision within sixty days of  
17 the end of the comment period following publication of the notice by  
18 the applicant or within sixty days of the date on which compliance with  
19 the state environmental policy act, chapter 43.21C RCW, is completed,  
20 whichever is later. The applicant and the department may by prior  
21 mutual agreement extend the time for making a decision.

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

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

37 (b) The water system shall provide evidence of publication of the

1 notice to the department, the department of health, and the local  
2 government with land use authority over the proposed new development;

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

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

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

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

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

29 (h) The department shall provide a priority to reviewing and  
30 deciding upon applications subject to this subsection, and shall make  
31 its decision within sixty days of the end of the comment period  
32 following publication of the notice by the applicant or within sixty  
33 days of the date on which compliance with the state environmental  
34 policy act, chapter 43.21C RCW, is completed, whichever is later. The  
35 applicant and the department may by prior mutual agreement extend the  
36 time for making a decision;

37 (i) In no case may the quantity of water consolidated with the

1 water system's water rights exceed either five thousand gallons per day  
2 or fourteen new connections;

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

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

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

15 (m) After beneficial use has occurred, the water system shall  
16 comply with the provisions of RCW 90.03.330 to obtain a certificate of  
17 water right.

18 (4) Any determination by the department under this section is  
19 appealable to the pollution control hearings board under chapter 43.21B  
20 RCW.

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