
ENGROSSED SUBSTITUTE SENATE BILL 5200

State of Washington

63rd Legislature

2013 Regular Session

By Senate Agriculture, Water & Rural Economic Development (originally sponsored by Senators Hatfield and Shin)

READ FIRST TIME 02/13/13.

1 AN ACT Relating to consolidating a new exempt withdrawal of
2 groundwater into an existing public water system; and amending RCW
3 90.44.105.

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

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

7 (1)(a) Upon the issuance by the department of an amendment to the
8 appropriate permit or certificate of groundwater right, the holder of
9 a valid right to withdraw public groundwaters may consolidate that
10 right with a groundwater right exempt from the permit requirement under
11 RCW 90.44.050, without affecting the priority of either of the water
12 rights being consolidated. Such a consolidation amendment shall be
13 issued only after publication of a notice of the application, a comment
14 period, and a determination made by the department, in lieu of meeting
15 the conditions required for an amendment under RCW 90.44.100, that:

16 ~~((1))~~ (i) The exempt well taps the same body of public
17 groundwater as the well to which the water right of the exempt well is
18 to be consolidated;

1 ~~((2))~~ (ii) Use of the exempt well shall be discontinued upon
2 approval of the consolidation amendment to the permit or certificate;

3 ~~((3))~~ (iii) Legally enforceable agreements have been entered to
4 prohibit the construction of another exempt well to serve the area
5 previously served by the exempt well to be discontinued, and such
6 agreements are binding upon subsequent owners of the land through
7 appropriate binding limitations on the title to the land;

8 ~~((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; and

11 ~~((5))~~ (v) Other existing rights, including ground and surface
12 water rights and minimum stream flows adopted by rule, shall not be
13 impaired.

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

21 (2) The amount of the water to be added to the holder's permit or
22 certificate upon discontinuance of the exempt well or approval of a
23 consolidation under subsection (3) of this section 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) An existing publicly owned and operated group A or group B
23 water system, as those terms are defined in RCW 70.119A.020, may serve
24 a proposed new development with a quantity of water that otherwise
25 would be withdrawn for beneficial use under the permit exemption in RCW
26 90.44.050. However, not more than five thousand gallons per day may be
27 provided in this manner by any water system. The existing water rights
28 for a water system will be increased by the amount of water
29 beneficially used for that purpose if the following conditions are met:

30 (a) A determination is made under RCW 58.17.110 or 19.27.097 that
31 potable water is legally available for single or group domestic use
32 under the permit exemption in RCW 90.44.050 and that provision of this
33 water by the existing water system would comply with water resource
34 rules adopted by the department under chapter 90.54 RCW;

35 (b) The existing water system does not have water rights in
36 sufficient quantities to serve the proposed new development and
37 withdraws water from the same body of public groundwater as would a new
38 well constructed to serve the proposed new development;

1 (c) The water system is in compliance with the water use efficiency
2 requirements of RCW 70.119A.180(4), drinking water rules adopted by the
3 department of health under RCW 43.70.040, and rules adopted by the
4 state board of health under RCW 43.20.050(2)(a); and

5 (d) Within five years of providing a water supply under this
6 subsection, the water system complies with the applicable requirements
7 of subsections (1) and (2) of this section and, at such time, provides
8 the department with metered water use information for the new
9 development to serve as the basis for quantifying the consolidation.

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