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**SUBSTITUTE HOUSE BILL 1534**

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**State of Washington                      61st Legislature                      2010 Regular Session**

**By** House Agriculture & Natural Resources (originally sponsored by Representatives Upthegrove, Takko, and Williams)

READ FIRST TIME 01/27/10.

1            AN ACT Relating to local utility district response to well  
2 notification; amending RCW 18.104.030, 90.44.050, 18.104.048, and  
3 18.104.155; reenacting and amending RCW 43.21B.110 and 43.21B.110;  
4 prescribing penalties; providing an effective date; and providing an  
5 expiration date.

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

7            **Sec. 1.** RCW 18.104.030 and 1993 c 387 s 3 are each amended to read  
8 as follows:

9            It is unlawful:

10            (1) For any person to supervise, construct, alter, or decommission  
11 a well without complying with the provisions of this chapter and the  
12 rules for well construction adopted pursuant to this chapter;

13            (2) For any person to cause a well to be constructed in violation  
14 of the standards for well construction established by this chapter and  
15 rules adopted by the department pursuant to this chapter;

16            (3) For a prospective water well owner to have a water well  
17 constructed without first obtaining a water right permit, if a permit  
18 is required;

1       (4) For new water wells to be constructed after the effective date  
2 of this section within a group A water system service area for the  
3 purpose of watering a lawn or of a noncommercial garden not exceeding  
4 one-half acre in area, authorized under RCW 90.44.050, without  
5 complying with the following procedure:

6       (a) Prior to construction, the driller of any water well must  
7 notify the water purveyor of the group A water system of the driller's  
8 intent to drill on a notification form provided by the water purveyor  
9 of the group A water system.

10       (b) After verifying the purpose of use for the well, the water  
11 purveyor of the group A water system must provide written confirmation  
12 to the driller that the water system is either: (i) Unable or  
13 unwilling to provide water service to the property in a reasonable and  
14 timely manner; or (ii) able and willing to provide water service to the  
15 property in a reasonable and timely manner. The water purveyor of the  
16 group A water system must respond within ten days of receiving the  
17 notification form. Construction of a water well may commence only  
18 after the water purveyor of the group A water system determines the  
19 water system is unable or unwilling to provide water service to the  
20 property in a reasonable and timely manner.

21       (c) The driller must submit a copy of the written confirmation from  
22 the water purveyor provided in (b) of this subsection, stating the  
23 water system is unable or unwilling to provide water service to the  
24 property in a reasonable and timely manner, to the department  
25 concurrently with the notice of intent to drill as required by RCW  
26 18.104.048.

27       (d) Water purveyors of a group A water system must provide notice  
28 of the requirements of this section to customers in their jurisdiction,  
29 including information easily accessible on their web site.

30       (e) A water purveyor of a group A water system may elect to exempt  
31 their jurisdiction from the requirements of (a) through (d) of this  
32 subsection. If a water purveyor chooses to exempt their jurisdiction,  
33 the water purveyor must provide notice of the exemption to customers in  
34 their jurisdiction, including placing a notice of their exemption  
35 easily accessible on their web site.

36       (f) Any person aggrieved by a determination of the water purveyor  
37 of the group A water system may obtain a review thereof by filing a

1 petition for review with the pollution control hearings board within  
2 thirty days of the date of the determination by the water purveyor of  
3 the group A water system.

4 (g) For the purposes of this section, "group A water system" means  
5 a system with fifteen or more service connections, regardless of the  
6 number of people, or a system serving an average of twenty-five or more  
7 people per day for sixty or more days within a calendar year,  
8 regardless of the number of service connections;

9 (5) For any person to construct, alter, or decommission a well  
10 unless the fees required by RCW 18.104.055 have been paid;

11 ~~((+5))~~ (6) For a person to tamper with or remove a well  
12 identification tag except during well alteration; and

13 ~~((+6))~~ (7) Except as provided in RCW 18.104.180, for any person to  
14 contract to engage in the construction of a well or to act as a well  
15 operator without first obtaining a license pursuant to this chapter.

16 **Sec. 2.** RCW 90.44.050 and 2003 c 307 s 1 are each amended to read  
17 as follows:

18 After June 6, 1945, no withdrawal of public groundwaters of the  
19 state shall be begun, nor shall any well or other works for such  
20 withdrawal be constructed, unless an application to appropriate such  
21 waters has been made to the department and a permit has been granted by  
22 it as herein provided: EXCEPT, HOWEVER, That any withdrawal of public  
23 groundwaters for stock-watering purposes, or for the watering of a lawn  
24 or of a noncommercial garden not exceeding one-half acre in area  
25 subject to the provisions of RCW 18.104.030, or for single or group  
26 domestic uses in an amount not exceeding five thousand gallons a day,  
27 or as provided in RCW 90.44.052, or for an industrial purpose in an  
28 amount not exceeding five thousand gallons a day, is and shall be  
29 exempt from the provisions of this section, but, to the extent that it  
30 is regularly used beneficially, shall be entitled to a right equal to  
31 that established by a permit issued under the provisions of this  
32 chapter: PROVIDED, HOWEVER, That the department from time to time may  
33 require the person or agency making any such small withdrawal to  
34 furnish information as to the means for and the quantity of that  
35 withdrawal: PROVIDED, FURTHER, That at the option of the party making  
36 withdrawals of groundwaters of the state not exceeding five thousand  
37 gallons per day, applications under this section or declarations under

1 RCW 90.44.090 may be filed and permits and certificates obtained in the  
2 same manner and under the same requirements as is in this chapter  
3 provided in the case of withdrawals in excess of five thousand gallons  
4 a day.

5 **Sec. 3.** RCW 18.104.048 and 1993 c 387 s 6 are each amended to read  
6 as follows:

7 After meeting all the requirements of RCW 18.104.030(4) a property  
8 owner or the owner's agent shall notify the department of his or her  
9 intent to begin well construction, reconstruction, or decommissioning  
10 procedures at least seventy-two hours in advance of commencing work.  
11 The notice shall be submitted on forms provided by the department and  
12 shall be accompanied by the fees required by RCW 18.104.055. The  
13 notice shall contain the name of the owner of the well, location of the  
14 well, proposed use, approximate start date, well contractor's or  
15 operator's name and license number, company's name, and other pertinent  
16 information as prescribed by rule of the department. Rules of the  
17 department shall also provide for prior telephonic notification by well  
18 contractors or operators in exceptional situations. The department  
19 shall issue a receipt indicating that the notice required by this  
20 section has been filed and the fees required by RCW 18.104.055 have  
21 been paid not later than three business days after the department has  
22 received the notice and fees.

23 **Sec. 4.** RCW 18.104.155 and 1995 c 403 s 628 are each amended to  
24 read as follows:

25 (1) Except as provided in RCW 43.05.060 through 43.05.080 and  
26 43.03.150, the department of ecology may assess a civil penalty for a  
27 violation of this chapter or rules or orders of the department adopted  
28 or issued pursuant to it.

29 (2) There shall be three categories of violations: Minor, serious,  
30 and major.

31 (a) A minor violation is a violation that does not seriously  
32 threaten public health, safety, and the environment. Minor violations  
33 include, but are not limited to:

34 (i) Failure to submit completed start cards and well reports within  
35 the required time;

36 (ii) Failure to submit variance requests before construction;

1 (iii) Failure to submit well construction fees;  
2 (iv) Failure to place a well identification tag on a new well; and  
3 (v) Minor or reparable construction problems.

4 (b) A serious violation is a violation that poses a critical or  
5 serious threat to public health, safety, and the environment. Serious  
6 violations include, but are not limited to:

7 (i) Improper well construction;  
8 (ii) Intentional and improper location or siting of a well;  
9 (iii) Construction of a well without a required permit;  
10 (iv) Violation of decommissioning requirements;  
11 (v) Repeated minor violations; or  
12 (vi) Construction of a well by a person whose license has expired  
13 or has been suspended for not more than ninety days.

14 (c) A major violation is the construction of a well by a person:

15 (i) Without a license; (~~or~~)  
16 (ii) After the person's license has been suspended for more than  
17 ninety days or revoked; or  
18 (iii) Who fails to comply with all provisions of RCW 18.104.030(4).

19 (3)(a) The penalty for a minor violation shall be not less than one  
20 hundred dollars and not more than five hundred dollars. Before the  
21 imposition of a penalty for a minor violation, the department may issue  
22 an order of noncompliance to provide an opportunity for mitigation or  
23 compliance.

24 (b) The penalty for a serious violation shall be not less than five  
25 hundred dollars and not more than five thousand dollars.

26 (c) The penalty for a major violation shall be not less than five  
27 thousand dollars and not more than ten thousand dollars.

28 (4) In determining the appropriate penalty under subsection (3) of  
29 this section the department shall consider whether the person:

30 (a) Has demonstrated a general disregard for public health and  
31 safety through the number and magnitude of the violations;  
32 (b) Has demonstrated a disregard for the well construction laws or  
33 rules in repeated or continuous violations; or  
34 (c) Knew or reasonably should have known of circumstances that  
35 resulted in the violation.

36 (5) Penalties provided for in this section shall be imposed  
37 pursuant to RCW 43.21B.300. The department shall provide thirty days  
38 written notice of a violation as provided in RCW 43.21B.300(3).

1 (6) For informational purposes, a copy of the notice of violation,  
2 resulting from the improper construction of a well, that is sent to a  
3 water well contractor or water well construction operator, shall also  
4 be sent by the department to the well owner.

5 (7) Penalties collected by the department pursuant to this section  
6 shall be deposited in the reclamation account established by chapter  
7 89.16 RCW. Subject to legislative appropriation, the penalties may be  
8 spent only for purposes related to the restoration and enhancement of  
9 groundwater resources in the state.

10 **Sec. 5.** RCW 43.21B.110 and 2009 c 456 s 16, 2009 c 332 s 18, and  
11 2009 c 183 s 17 are each reenacted and amended to read as follows:

12 (1) The hearings board shall only have jurisdiction to hear and  
13 decide appeals from the following decisions of the department, the  
14 director, local conservation districts, and the air pollution control  
15 boards or authorities as established pursuant to chapter 70.94 RCW, or  
16 local health departments, and water purveyors of group A water systems  
17 as defined in RCW 70.119.020:

18 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
19 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144,  
20 90.56.310, and 90.56.330.

21 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
22 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
23 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

24 (c) A final decision by the department or director made under  
25 chapter 183, Laws of 2009.

26 (d) Except as provided in RCW 90.03.210(2), the issuance,  
27 modification, or termination of any permit, certificate, or license by  
28 the department or any air authority in the exercise of its  
29 jurisdiction, including the issuance or termination of a waste disposal  
30 permit, the denial of an application for a waste disposal permit, the  
31 modification of the conditions or the terms of a waste disposal permit,  
32 or a decision to approve or deny an application for a solid waste  
33 permit exemption under RCW 70.95.300.

34 (e) Decisions of local health departments regarding the grant or  
35 denial of solid waste permits pursuant to chapter 70.95 RCW.

36 (f) Decisions of local health departments regarding the issuance

1 and enforcement of permits to use or dispose of biosolids under RCW  
2 70.95J.080.

3 (g) Decisions of the department regarding waste-derived fertilizer  
4 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
5 department regarding waste-derived soil amendments under RCW 70.95.205.

6 (h) Decisions of local conservation districts related to the denial  
7 of approval or denial of certification of a dairy nutrient management  
8 plan; conditions contained in a plan; application of any dairy nutrient  
9 management practices, standards, methods, and technologies to a  
10 particular dairy farm; and failure to adhere to the plan review and  
11 approval timelines in RCW 90.64.026.

12 (i) Any other decision by the department or an air authority which  
13 pursuant to law must be decided as an adjudicative proceeding under  
14 chapter 34.05 RCW

15 (j) Decisions of a water purveyor of a group A water system under  
16 RCW 18.104.030(4).

17 (2) The following hearings shall not be conducted by the hearings  
18 board:

19 (a) Hearings required by law to be conducted by the shorelines  
20 hearings board pursuant to chapter 90.58 RCW.

21 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
22 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

23 (c) Appeals of decisions by the department under RCW 90.03.110 and  
24 90.44.220.

25 (d) Hearings conducted by the department to adopt, modify, or  
26 repeal rules.

27 (e) Appeals of decisions by the department as provided in chapter  
28 43.21L RCW.

29 (3) Review of rules and regulations adopted by the hearings board  
30 shall be subject to review in accordance with the provisions of the  
31 administrative procedure act, chapter 34.05 RCW.

32 **Sec. 6.** RCW 43.21B.110 and 2009 c 456 s 16 and 2009 c 332 s 18 are  
33 each reenacted and amended to read as follows:

34 (1) The hearings board shall only have jurisdiction to hear and  
35 decide appeals from the following decisions of the department, the  
36 director, local conservation districts, and the air pollution control

1 boards or authorities as established pursuant to chapter 70.94 RCW, or  
2 local health departments, and water purveyors group A water systems as  
3 defined in RCW 70.119.020:

4 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
5 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144,  
6 90.56.310, and 90.56.330.

7 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
8 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
9 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

10 (c) Except as provided in RCW 90.03.210(2), the issuance,  
11 modification, or termination of any permit, certificate, or license by  
12 the department or any air authority in the exercise of its  
13 jurisdiction, including the issuance or termination of a waste disposal  
14 permit, the denial of an application for a waste disposal permit, the  
15 modification of the conditions or the terms of a waste disposal permit,  
16 or a decision to approve or deny an application for a solid waste  
17 permit exemption under RCW 70.95.300.

18 (d) Decisions of local health departments regarding the grant or  
19 denial of solid waste permits pursuant to chapter 70.95 RCW.

20 (e) Decisions of local health departments regarding the issuance  
21 and enforcement of permits to use or dispose of biosolids under RCW  
22 70.95J.080.

23 (f) Decisions of the department regarding waste-derived fertilizer  
24 or micronutrient fertilizer under RCW 15.54.820, and decisions of the  
25 department regarding waste-derived soil amendments under RCW 70.95.205.

26 (g) Decisions of local conservation districts related to the denial  
27 of approval or denial of certification of a dairy nutrient management  
28 plan; conditions contained in a plan; application of any dairy nutrient  
29 management practices, standards, methods, and technologies to a  
30 particular dairy farm; and failure to adhere to the plan review and  
31 approval timelines in RCW 90.64.026.

32 (h) Any other decision by the department or an air authority which  
33 pursuant to law must be decided as an adjudicative proceeding under  
34 chapter 34.05 RCW.

35 (i) Decisions of a water purveyor of a group A water system under  
36 RCW 18.104.030(4).

37 (2) The following hearings shall not be conducted by the hearings  
38 board:



1 (a) Hearings required by law to be conducted by the shorelines  
2 hearings board pursuant to chapter 90.58 RCW.

3 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
4 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

5 (c) Appeals of decisions by the department under RCW 90.03.110 and  
6 90.44.220.

7 (d) Hearings conducted by the department to adopt, modify, or  
8 repeal rules.

9 (e) Appeals of decisions by the department as provided in chapter  
10 43.21L RCW.

11 (3) Review of rules and regulations adopted by the hearings board  
12 shall be subject to review in accordance with the provisions of the  
13 Administrative Procedure Act, chapter 34.05 RCW.

14 NEW SECTION. **Sec. 7.** Section 5 of this act expires June 30, 2019.

15 NEW SECTION. **Sec. 8.** Section 6 of this act takes effect June 30,  
16 2019.

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