

# SENATE BILL REPORT

## ESSB 5200

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As Passed Senate, March 11, 2013

**Title:** An act relating to consolidating a new exempt withdrawal of groundwater into an existing public water system.

**Brief Description:** Concerning consolidating a new exempt withdrawal of groundwater into an existing public water system.

**Sponsors:** Senate Committee on Agriculture, Water & Rural Economic Development (originally sponsored by Senators Hatfield and Shin).

**Brief History:**

**Committee Activity:** Agriculture, Water & Rural Economic Development: 1/29/13, 2/12/13 [DPS].

Passed Senate: 3/11/13, 38-11.

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### SENATE COMMITTEE ON AGRICULTURE, WATER & RURAL ECONOMIC DEVELOPMENT

**Majority Report:** That Substitute Senate Bill No. 5200 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hatfield, Chair; Honeyford, Ranking Member; Brown, Eide, Hobbs, Schoesler and Shin.

**Staff:** Bob Lee (786-7404)

**Background:** There currently is a process to consolidate the water right associated with a permit-exempt well with another water right if the permit-exempt well has been drilled and the water right has been beneficially used. To do so, there are a number of requirements including the following:

- the exempt well taps the same body of ground water as the water right with which it is to be consolidated;
- both water rights retain their respective priority dates;
- the use of the exempt well must be discontinued if the consolidation amendment is approved;
- legally enforceable agreements are entered to prohibit the construction of another exempt well on the area previously served by the discontinued well;
- that the discontinued well is properly decommissioned;

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- that other existing water rights, including instream flow rights, are not impaired; and
- that a notice is published in a local newspaper.

The amount of water added to the consolidated permit or certificate from the exempt well is determined by the average withdrawal from the exempt well for the most recent five-year period, but not more than 5000 gallons per day. Up to this limit, the amount is to be not less than 800 gallons per day per residential connection or an alternative minimum amount set by the Department of Ecology (Ecology) in consultation with the Department of Health (DOH). Ecology must presume that an amount identified by the applicant as being the average withdrawal from the well is accurate if the applicant establishes that it is consistent with average amounts of water used for similar uses in the general area of the exempt well.

Ecology must favor approval of such a consolidation if the requirements for consolidation are met and the discontinuance of the exempt well is consistent with an adopted coordinated water system plan, an adopted comprehensive land use plan, or other comprehensive watershed management plan. Ecology must give priority to reviewing and deciding applications for consolidation. It must make its decision within 60 days of the end of a 30-day comment period following the second publication of the notice by the applicant or within 60 days of the date that compliance with the State Environmental Policy Act is completed, whichever is later. The applicant and Ecology may agree to extend the time for making a decision.

Currently, there is no authority to consolidate a new water right associated with a permit-exempt well with an existing water right held by a public water system unless the exempt well has been drilled and its water has been put to beneficial use.

**Summary of Engrossed Substitute Bill:** If a local government determines that potable water is legally available for a new single or group domestic use under either the permitted or permit-exempt groundwater statute, and that legally available water could be provided through an existing group A or group B public water system that lacks sufficient water rights for the proposed new development, the water system may consolidate with its existing water right the additional quantity available necessary to serve the new development. The total amount of additional water consolidated into an existing water system may not exceed 5000 gallons per day but the provision of this water by the existing water system must comply with rules adopted under the 1971 Water Resources Act, water use efficiency and drinking water rules adopted by DOH and the State Board of Health, and applicable requirements of the ground water transfer code. Additionally, the public water system must provide to Ecology metered water use information for the new development to serve as the basis for quantification of the consolidation of the water rights.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** None.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** PRO: Water is legally available for use by permit-exempt wells in many parts of the state. The bill helps water systems protect their service areas. Instead of drilling an additional well, the bill allows a new user to hook up to an existing system and not affect the total quantity of water that would be delivered.

OTHER: There is a question of what happens if a person has some livestock and whether that would be allowed. There is support for the concept of having fewer straws in the ground. There is concern as to what happens if Ecology and the local government disagree as to whether water is legally available. Interested stakeholders would like to work on this bill to make it similar to what was developed two years ago.

**Persons Testifying:** PRO: Bill Clarke, WA. Public Utility District Assn.; Scott Hazlegrove, WA. Assn. of Sewer and Water Districts.

OTHER: Jack Field, WA Cattlemen's Assn.; Bruce Wishart, Center for Environmental Law and Policy, Sierra Club; Maia Bellon, Ecology; Darcy Nonemacher, WA Environmental Council; Dawn Vyvyan, Yakama Nation.