

HOUSE BILL REPORT

ESHB 2013

As Amended by the Senate

Title: An act relating to the full and complete development of existing permits or certificates of ground water right.

Brief Description: Developing an existing ground water right.

Sponsors: By House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Regala, Schoesler, Linville, Johnson, Bush, McDonald, Mastin, Talcott, Delvin, Carrell, Smith, Koster, Sullivan, Kastama, Fisher, Conway, Cooper and Honeyford).

Brief History:

Committee Activity:

Agriculture & Ecology: 3/5/97 [DPS].

Floor Activity:

Passed House: 3/15/97, 95-1.

Senate Amended.

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper; Delvin; Koster; Mastin; Regala and Sump.

Staff: Kenneth Hirst (786-7105).

Background: Permits and Certificates. With the adoption of the surface water code in 1917 and the groundwater code in 1945, new rights to the use of water are established under a permit system. However, certain uses of groundwater not exceeding 5,000 gallons per day have been exempted from this permit requirement. The permit system is based on the prior appropriation doctrine that "first in time is first in right." Once water is put to beneficial use in accordance with the conditions of such a permit, the permit holder is issued a water right certificate.

Transfers and Changes. The water right may be transferred to other uses or places of use through a transfer or change of a surface water right or an amendment to a

groundwater right. A substitute or supplementary well may also be provided at a new location under such an amendment for a groundwater right. These transfers, changes, amendments, and substitute wells do not change the priority date of the original water right. However, they cannot be approved if they would interfere with existing rights, including junior rights.

Summary of Bill: The construction of replacement or additional wells under existing rights to groundwater are now statutorily divided into two categories and expressly treated differently. The two categories are based on whether the replacement or additional wells are to be constructed at a new location or at the location of the original well.

The construction of a replacement or additional well at a new location continues to require the approval of an application for an amendment to the right. The total withdrawal from the original well and an additional well may not enlarge the right conveyed by the original permit or certificate. If a replacement well is approved, use of the original well must be discontinued and the original well must be properly decommissioned.

The construction of a replacement or additional well at the location of the original well is expressly allowed without application for an amendment to the right. However, the Department of Ecology (DOE) must require a showing of compliance with the conditions that apply to such replacement or additional wells and may specify an approved manner of construction. The construction of a replacement well or additional well at the location of the original well is no longer prohibited from impairing any existing rights, junior or senior. It now must not impair senior rights.

EFFECT OF SENATE AMENDMENT(S): Removes a portion of the intent section that refers to the full development of the water rights of public water systems within urban growth areas. The other provisions of the original bill on this subject were previously removed from the bill.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (1) The Department of Health requires public water systems to meet peak day demands, but a water right issued by the DOE only reflects an average daily withdrawal. If the use of a utility's water right is consistent with growth management, it should be used to the full extent of its paper- right. (2) If a utility wants to construct a new well, it is told to get a new water right. But if it is not using the full amount of its paper- right, it is told it cannot get a new water right.

The bill will assist compliance with growth management by allowing utilities to develop to the extent of their paper- rights. (3) The bill gives flexibility for constructing replacement wells; they can be constructed without approval by the DOE.

Testimony Against: The bill allows any right holder, not just utilities, to develop the right to the full extent of his or her paper- right. It will force senior right holders to go to court to protect their rights.

Testified: Jim Sherrill, Parkland Light and Water; Jeff Johnson, Spanaway Water Company; Mark Hullenger, Lakewood Municipal Water District; Steve Robinson, NW Indian Fisheries Commission (in favor). Judy Turpin, Washington Environmental Council (opposed); and Randy Scott, Lummi Indian Business Council (commented).