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**SUBSTITUTE SENATE BILL 6125**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** Senate Committee on Natural Resources, Energy & Water (originally sponsored by Senator Morton)

READ FIRST TIME 01/23/04.

1 AN ACT Relating to alternate members of a water conservancy board;  
2 and amending RCW 90.80.010, 90.80.035, 90.80.050, 90.80.070, and  
3 90.80.120.

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

5 **Sec. 1.** RCW 90.80.010 and 2001 c 237 s 7 are each amended to read  
6 as follows:

7 The following definitions apply throughout this chapter, unless the  
8 context clearly requires otherwise.

9 (1) "Alternate" means an individual: (a) Who is appointed by the  
10 county legislative authority or authorities under RCW 90.80.050(3); (b)  
11 who is trained under the requirements of RCW 90.80.040; and (c) who,  
12 while serving as a replacement for an absent or recused commissioner:  
13 (i) May serve and vote as a commissioner; (ii) is subject to any  
14 requirement applicable to a commissioner; and (iii) counts toward a  
15 quorum.

16 (2) "Board" means a water conservancy board created under this  
17 chapter.

18 ((+2)) (3) "Commissioner" means an individual who is appointed by  
19 the county legislative authority or authorities as a member of a water

1 conservancy board under RCW 90.80.050(1), or an alternate appointed  
2 under RCW 90.80.050(3) while serving as a replacement for an absent or  
3 recused commissioner.

4 ((+3+)) (4) "Department" means the department of ecology.

5 ((+4+)) (5) "Director" means the director of the department of  
6 ecology.

7 ((+5+)) (6) "Record of decision" means the conclusion reached by a  
8 water conservancy board regarding an application for a transfer filed  
9 with the board.

10 ((+6+)) (7) "Transfer" means a transfer, change, amendment, or  
11 other alteration of a part or all of a water right authorized under RCW  
12 90.03.380, 90.03.390, or 90.44.100.

13 **Sec. 2.** RCW 90.80.035 and 2001 c 237 s 8 are each amended to read  
14 as follows:

15 (1) If a county is the only county having lands comprising a water  
16 resource inventory area as defined in chapter 173-500 WAC, the county  
17 may elect to establish a water conservancy board for the water resource  
18 inventory area, rather than for the entire county.

19 (2) Counties having lands within a water resource inventory area  
20 may jointly petition the department for establishment of a water  
21 conservancy board for the water resource inventory area. Counties may  
22 jointly petition the department to establish boards serving multiple  
23 counties or one or more water resource inventory areas. For any of  
24 these multicounty options, the counties must reach their joint  
25 determination on the decision to file the petition, on the proposed  
26 bylaws, and on other matters relating to the establishment and  
27 operation of the board in accordance with the provisions of this  
28 chapter and chapter 39.34 RCW, the interlocal cooperation act. Each  
29 county must meet the requirements of RCW 90.80.020(2). The counties  
30 must jointly determine the sufficiency of a petition under RCW  
31 90.80.020(3) and each county legislative authority must hold a hearing  
32 in its county.

33 (3) If establishment of a multicounty water conservancy board under  
34 any of the options provided in subsection (2) of this section is  
35 approved by the department, the counties must jointly appoint the board  
36 commissioners and jointly appoint members to fill vacancies as they

1 occur, and may jointly appoint alternates in accordance with the  
2 provisions of this chapter and chapter 39.34 RCW.

3 (4) A board established for more than one county or for one or more  
4 water resource inventory areas has the same powers as other boards  
5 established under this chapter. The board has no jurisdiction outside  
6 the boundaries of the water resource inventory area or areas or the  
7 county or counties, as applicable, for which it has been established,  
8 except as provided in this chapter.

9 (5) The counties establishing a board for a multiple county area  
10 must designate a lead county for purposes of providing a single point  
11 of contact for communications with the department. The lead county  
12 shall forward the information required in RCW 90.80.030(1) for each  
13 county.

14 **Sec. 3.** RCW 90.80.050 and 2001 c 237 s 10 are each amended to read  
15 as follows:

16 (1) A water conservancy board constitutes a public body corporate  
17 and politic and a separate unit of local government in the state. Each  
18 board shall consist of three commissioners appointed by the county  
19 legislative authority or authorities as applicable for six-year terms.  
20 The county legislative authority or authorities shall stagger the  
21 initial appointment of commissioners so that the first commissioners  
22 who are appointed shall serve terms of two, four, and six years,  
23 respectively, from the date of their appointment. The county  
24 legislative authority or authorities may appoint two additional  
25 commissioners, for a total of five. If the county or counties elect to  
26 appoint five commissioners, the initial terms of the additional  
27 commissioners shall be for three and five-year terms respectively. All  
28 vacancies shall be filled for the unexpired term.

29 (2) The county legislative authority or authorities shall consider,  
30 but are not limited in appointing, nominations to the board by people  
31 or entities petitioning or requesting the creation of the board. The  
32 county legislative authority or authorities shall ensure that at least  
33 one commissioner is an individual water right holder who diverts or  
34 withdraws water for use within the area served by the board. The  
35 county legislative authority or authorities must appoint one person who  
36 is not a water right holder. If the county legislative authority or  
37 authorities choose not to appoint five commissioners, and as of May 10,

1 2001, there is no commissioner on an existing board who is not a water  
2 right holder, the county or counties are not required to appoint a new  
3 commissioner until the first vacancy occurs. In making appointments to  
4 the board, the county legislative authority or authorities shall choose  
5 from among persons who are residents of the county or counties or a  
6 county that is contiguous to the county that the water conservancy  
7 board is to serve.

8 (3) The county legislative authority or authorities may appoint up  
9 to two alternates to serve in a reserve capacity as replacements for  
10 absent or recused commissioners, and while serving in that capacity an  
11 alternate may serve for all or any portion of a meeting of the board.  
12 Alternates do not hold an appointed commissioner position on a board as  
13 set forth under subsection (1) of this section. An alternate shall be  
14 appointed to serve a six-year term.

15 (4) No commissioner may participate in a record of decision of a  
16 board until he or she has successfully completed the necessary training  
17 required under RCW 90.80.040. Commissioners shall serve without  
18 compensation, but are entitled to reimbursement for necessary travel  
19 expenses in accordance with RCW 43.03.050 and 43.03.060 and costs  
20 incident to receiving training.

21 **Sec. 4.** RCW 90.80.070 and 2001 c 237 s 11 are each amended to read  
22 as follows:

23 (1) A person proposing a transfer of a water right may elect to  
24 file an application with a water conservancy board, if a board has been  
25 established for the geographic area where the water is or would be  
26 diverted, withdrawn, or used. If the person has already filed an  
27 application with the department, the person may request that the  
28 department convey the application to the conservancy board with  
29 jurisdiction and the department must promptly forward the application.  
30 A board is not required to process an application filed with the board.  
31 If a board decides that it will not process an application, it must  
32 return the application to the applicant and must inform the applicant  
33 that the application may be filed with the department. An application  
34 to the board for a transfer shall be made on a form provided by the  
35 department. A board may require an applicant to submit within a  
36 reasonable time additional information as may be required by the board  
37 in order to review and act upon the application. At a minimum, the

1 application shall include information sufficient to establish to the  
2 board's satisfaction that a right to the quantity of water being  
3 transferred exists, and a description of any applicable limitations on  
4 the right to use water, including the point of diversion or withdrawal,  
5 place of use, source of supply, purpose of use, quantity of use  
6 permitted, time of use, period of use, and the place of storage.

7 (2) The applicant for any proposed water right transfer may apply  
8 to a board for a record of decision on a transfer if the water proposed  
9 to be transferred is currently diverted, withdrawn, or used within the  
10 geographic area in which the board has jurisdiction, or would be  
11 diverted, withdrawn, or used within the geographic area in which the  
12 board has jurisdiction if the transfer is approved. In the case of a  
13 proposed water right transfer in which the water is currently diverted  
14 or withdrawn or would be diverted or withdrawn outside the geographic  
15 boundaries of the county or the water resource inventory area where the  
16 use is proposed to be made, the board shall hold a public hearing in  
17 the county of the diversion or withdrawal or proposed diversion or  
18 withdrawal. The board shall provide for prominent publication of  
19 notice of the hearing in a newspaper of general circulation published  
20 in the county in which the hearing is to be held for the purpose of  
21 affording an opportunity for interested persons to comment upon the  
22 application. If an application is for a transfer of water out of the  
23 water resource inventory area that is the source of the water, the  
24 board shall consult with the department regarding the application.

25 (3) After an application for a transfer is filed with the board,  
26 the board shall publish notice of the application and send notice to  
27 state agencies in accordance with the requirements of RCW 90.03.280.  
28 In addition, the board shall send notice of the application to any  
29 Indian tribe with reservation lands that would be, but for RCW  
30 90.80.055(2), within the area in which the board has jurisdiction. The  
31 board shall also provide notice of the application to any Indian tribe  
32 that has requested that it be notified of applications. Any person may  
33 submit comments and other information to the board regarding the  
34 application. The comments and information may be submitted in writing  
35 or verbally at any public meeting of the board to discuss or decide on  
36 the application. The comments must be considered by the board in  
37 making its record of decision.

1 (4) If a majority of the board determines that the application is  
2 complete, and that the transfer is in accordance with RCW 90.03.380,  
3 90.03.390, or 90.44.100, the board must issue a record of decision  
4 approving the transfer, subject to review by the director. In making  
5 its record of decision, the board must consider among other things  
6 whether the proposed transfer can be made without detriment or injury  
7 to existing water rights, including rights established for instream  
8 flows. The board must include in its record of decision any conditions  
9 that are deemed necessary for the transfer to qualify for approval  
10 under the applicable laws of the state. The basis for the record of  
11 decision of the board must be documented in a report of examination.  
12 The board's proposed approval must clearly state that the applicant is  
13 not permitted to proceed to effect the proposed transfer until a final  
14 decision is made by the director. In making its record of decision,  
15 the board must consider among other things whether the proposed  
16 transfer can be made without detriment or injury to existing water  
17 rights, including rights established for instream flows.

18 (5) If a majority of the board determines that the application  
19 cannot be approved under the applicable laws of the state of  
20 Washington, the board must make a record of decision denying the  
21 application together with its report of examination documenting its  
22 record of decision. The board's record of decision is subject to  
23 review by the director under RCW 90.80.080.

24 (6) When alternates appointed under the provisions of RCW  
25 90.80.050(3) are serving as commissioners on a board, a majority vote  
26 of the board must include at least one commissioner appointed under the  
27 provisions of RCW 90.80.050(1).

28 **Sec. 5.** RCW 90.80.120 and 2001 c 237 s 15 are each amended to read  
29 as follows:

30 (1) A commissioner of a water conservancy board shall not engage in  
31 any act which is in conflict with the proper discharge of the official  
32 duties of a commissioner. A commissioner is deemed to have a conflict  
33 of interest if he or she:

34 (a) Has an ownership interest in a water right subject to an  
35 application for approval before the board;

36 (b) Receives or has a financial interest in an application

1 submitted to the board or a project, development, or venture related to  
2 the approval of the application; or

3 (c) Solicits, accepts, or seeks anything of economic value as a  
4 gift, gratuity, or favor from any person, firm, or corporation involved  
5 in the application.

6 (2) In the event of a recusal of an appointed commissioner, an  
7 alternate may serve as a commissioner on a board and may act upon the  
8 official board business for which the conflict of interest exists.

9 (3) The department shall return a record of decision to a  
10 conservancy board without action where the department determines that  
11 any member of a board has violated subsection (1) of this section.

12 (a) If a person seeking to rely on this section to disqualify a  
13 commissioner knows of the basis for disqualification before the time  
14 the board issues a record of decision, the person must request the  
15 board to have the commissioner recuse himself or herself from further  
16 involvement in processing the application, or be barred from later  
17 raising that challenge.

18 (b) If the commissioner does not recuse himself or herself or if  
19 the person becomes aware of the basis for disqualification after the  
20 board issues a record of decision but within the time period under RCW  
21 90.80.080(3) for filing objections with the department, the person must  
22 raise the challenge with the department. If the department determines  
23 that the commissioner should be disqualified under this section, the  
24 director must remand the record of decision to the board for  
25 reconsideration and resubmission of a record of decision. The  
26 disqualified commissioner shall not participate in any further board  
27 review of the application. The department's decision on whether to  
28 remand a record of decision under this section may only be appealed at  
29 the same time and in the same manner as an appeal of the department's  
30 decision to affirm, modify, or reverse the record of decision after  
31 remand.

32 (c) If the person becomes aware of the basis for disqualification  
33 after the time for filing objections with the department, the person  
34 may raise the challenge in an appeal of the department's final decision  
35 under RCW 90.80.090.

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