

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6125

58th Legislature
2004 Regular Session

Passed by the Senate February 9, 2004
YEAS 46 NAYS 0

President of the Senate

Passed by the House March 2, 2004
YEAS 94 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
**ENGROSSED SUBSTITUTE SENATE BILL
6125** as passed by the Senate and
the House of Representatives on
the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6125

Passed Legislature - 2004 Regular Session

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 (7) An alternate when serving as a commissioner in the review of an
29 application before the board shall:

30 (a) Review the written record before the board and any exhibits
31 provided for the review or provided at the hearing if a hearing was
32 held;

33 (b) Review any audio or video recordings made of the proceedings on
34 the application; and

35 (c) Conduct a site visit if a site visit by other commissioners
36 acting on the application has been previously conducted.

37 (8) An alternate serving as a commissioner shall be guided by the
38 conflict of interest standards applicable to all commissioners under

1 RCW 90.80.120. The board shall provide notice of an alternate sitting
2 as a commissioner to the applicant and other participants in
3 proceedings before the board in a timely manner to provide sufficient
4 time for any challenges for conflict of interest to be made prior to
5 the board's decision on the application.

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

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

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

14 (b) Receives or has a financial interest in an application
15 submitted to the board or a project, development, or venture related to
16 the approval of the application; or

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

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

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

26 (a) If a person seeking to rely on this section to disqualify a
27 commissioner knows of the basis for disqualification before the time
28 the board issues a record of decision, the person must request the
29 board to have the commissioner recuse himself or herself from further
30 involvement in processing the application, or be barred from later
31 raising that challenge.

32 (b) If the commissioner does not recuse himself or herself or if
33 the person becomes aware of the basis for disqualification after the
34 board issues a record of decision but within the time period under RCW
35 90.80.080(3) for filing objections with the department, the person must
36 raise the challenge with the department. If the department determines
37 that the commissioner should be disqualified under this section, the

1 director must remand the record of decision to the board for
2 reconsideration and resubmission of a record of decision. The
3 disqualified commissioner shall not participate in any further board
4 review of the application. The department's decision on whether to
5 remand a record of decision under this section may only be appealed at
6 the same time and in the same manner as an appeal of the department's
7 decision to affirm, modify, or reverse the record of decision after
8 remand.

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

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