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HOUSE BILL 1004

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State of Washington                      59th Legislature                      2005 Regular Session

By Representatives Hinkle, Kretz, Sump and Clements

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Committee on Economic Development, Agriculture & Trade.

1            AN ACT Relating to water conservancy boards; amending RCW  
2 90.80.010, 90.80.020, 90.80.030, 90.80.035, 90.80.040, 90.80.055,  
3 90.80.065, 90.80.070, 90.80.080, 90.80.090, 90.80.100, 90.80.120,  
4 90.80.135, and 90.80.150; creating a new section; repealing RCW  
5 90.80.901; and declaring an emergency.

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

7            **Sec. 1.** RCW 90.80.010 and 2004 c 10 s 1 are each amended to read  
8 as follows:

9            The following definitions apply throughout this chapter, unless the  
10 context clearly requires otherwise.

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

18            (2) "Board" means a water conservancy board created under this  
19 chapter.

1 (3) "Commissioner" means an individual who is appointed by the  
2 county legislative authority or authorities as a member of a water  
3 conservancy board under RCW 90.80.050(1), or an alternate appointed  
4 under RCW 90.80.050(3) while serving as a replacement for an absent or  
5 recused commissioner.

6 ~~(4) ("Department" means the department of ecology.~~

7 ~~(5) "Director" means the director of the department of ecology.~~

8 ~~(6) "Record of")~~ "Decision" means the ~~((conclusion reached by))~~  
9 decision of a water conservancy board ~~((regarding))~~ to approve, deny,  
10 or approve with conditions an application for a transfer filed with the  
11 board.

12 ~~((7))~~ (5) "Department" means the department of ecology.

13 (6) "Transfer" means a transfer, change, amendment, or other  
14 alteration of a part or all of a water right authorized under RCW  
15 90.03.380, 90.03.390, or 90.44.100.

16 **Sec. 2.** RCW 90.80.020 and 1997 c 441 s 3 are each amended to read  
17 as follows:

18 (1) The county legislative authority of a county may create a water  
19 conservancy board ~~((, subject to approval by the director,))~~ for the  
20 purpose of expediting voluntary water transfers within the county.

21 (2) A water conservancy board may be initiated by ~~((; (a)))~~ a  
22 resolution of the county legislative authority ~~((; (b) a resolution~~  
23 ~~presented to)).~~ The county legislative authority ~~((calling for the~~  
24 ~~creation of a board))~~ may also be petitioned to create a water  
25 conservancy board by: (a) The legislative authority of an irrigation  
26 district, public utility district that operates a public water system,  
27 a reclamation district, a city operating a public water system, or a  
28 water-sewer district that operates a public water system; ~~((; (c) a~~  
29 ~~resolution by))~~ (b) the governing body of a cooperative or mutual  
30 corporation that operates a public water system serving one hundred or  
31 more accounts; ~~((; (d)))~~ (c) a petition signed by five or more water  
32 rights holders, including their addresses, who divert water for use  
33 within the county; or ~~((; (e)))~~ (d) any combination of (a) through  
34 ~~((; (d)))~~ (c) of this subsection. The ~~((resolution or))~~ petition must  
35 state the need for the board, include proposed bylaws or rules and  
36 procedures that will govern the operation of the board, identify the

1 geographic boundaries where there is an initial interest in transacting  
2 water sales or transfers, and describe the proposed method for funding  
3 the operation of the board.

4 (3) After receiving a (~~resolution or~~) petition to create a board,  
5 a county legislative authority shall determine its sufficiency. If the  
6 county legislative authority finds that the (~~resolution or~~) petition  
7 is sufficient, or if the county is initiating the creation of a board  
8 upon its own motion, it shall hold at least one public hearing on the  
9 proposed creation of the board. Notice of the hearing shall be  
10 published at least once in a newspaper of general circulation in the  
11 county not less than ten days nor more than thirty days before the date  
12 of the hearing. The notice shall describe the time, date, place, and  
13 purpose of the hearing, as well as the purpose of the board. Following  
14 the hearing, the county legislative authority may adopt a resolution  
15 approving the creation of the board if it finds that the board's  
16 creation is in the public interest. The resolution must identify the  
17 boundaries of the area that is within the jurisdiction of the board.

18 **Sec. 3.** RCW 90.80.030 and 1997 c 441 s 4 are each amended to read  
19 as follows:

20 (~~(1)~~) If it adopts a resolution creating a board, the county  
21 legislative authority shall (~~forward a copy of the resolution or~~  
22 ~~petition calling for the creation of the board,~~) inform the department  
23 of the board's creation by forwarding a copy of the resolution  
24 (~~approving the creation of the board, and a summary of the public~~  
25 ~~testimony presented at the public hearing to the director following the~~  
26 ~~adoption of the resolution calling for the board's creation)~~) to the  
27 department.

28 (~~(2)~~ The director shall approve or deny the creation of a board  
29 within forty five days after the county legislative authority has  
30 submitted all information required under subsection (1) of this  
31 section. The director must determine whether the creation of the board  
32 would further the purposes of this chapter and is in the public  
33 interest. The director shall include a description of the necessary  
34 training requirements for commissioners in the notice of approval sent  
35 to the county legislative authority.)

1       **Sec. 4.** RCW 90.80.035 and 2004 c 10 s 2 are each amended to read  
2 as follows:

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

7       (2) Counties having lands within a water resource inventory area  
8 may jointly (~~(petition the department for establishment of)~~) establish  
9 a water conservancy board for the water resource inventory area.  
10 Counties may jointly (~~(petition the department to)~~) establish boards  
11 serving multiple counties or one or more water resource inventory  
12 areas. For any of these multicounty options, the counties must reach  
13 their joint determination on the decision to (~~(file the petition)~~)  
14 create the board, on the proposed bylaws, and on other matters relating  
15 to the establishment and operation of the board in accordance with the  
16 provisions of this chapter and chapter 39.34 RCW, the interlocal  
17 cooperation act. Each county must meet the requirements of RCW  
18 90.80.020(2). The counties must jointly determine the sufficiency of  
19 a petition under RCW 90.80.020(3) and each county legislative authority  
20 must hold a hearing in its county.

21       (3) If (~~(establishment of)~~) a multicounty water conservancy board  
22 is created under any of the options provided in subsection (2) of this  
23 section (~~(is approved by the department)~~), the counties must jointly  
24 appoint the board commissioners and jointly appoint members to fill  
25 vacancies as they occur, and may jointly appoint alternates in  
26 accordance with the provisions of this chapter and chapter 39.34 RCW.

27       (4) A board established for more than one county or for one or more  
28 water resource inventory areas has the same powers as other boards  
29 established under this chapter. The board has no jurisdiction outside  
30 the boundaries of the water resource inventory area or areas or the  
31 county or counties, as applicable, for which it has been established,  
32 except as provided in this chapter.

33       (5) The counties establishing a board for a multiple county area  
34 must designate a lead county for purposes of providing a single point  
35 of contact for communications with the department. The lead county  
36 shall forward the (~~(information)~~) resolutions creating the board as  
37 required in RCW 90.80.030(1) for each county.



1 90.44.220, and such a determination does not preclude or prejudice a  
2 subsequent challenge to the validity, priority, or quantity of the  
3 right in a general adjudication under those sections.

4 (c) A board may establish a water right transfer information  
5 exchange through which all or part of a water right may be listed for  
6 sale or lease. The board may also accept and post notices in the  
7 exchange from persons interested in acquiring or leasing water rights  
8 from willing sellers.

9 (d) The director shall assign a representative of the department to  
10 provide technical assistance to each board. If requested by the board,  
11 the representative shall work with the board as it reviews applications  
12 for formal acceptance, prepares draft records of decision, and  
13 considers other technical or legal factors affecting the board's  
14 development of ~~((a final record of))~~ its decision. A board may request  
15 and accept additional technical assistance from the department. A  
16 board may also request and accept assistance and support from the  
17 county government or governments of the county or counties in which it  
18 operates.

19 (2) The jurisdiction of a board shall not apply within the  
20 boundaries of a federal Indian reservation or to lands held in trust  
21 for an Indian band, tribe, or nation by the federal government.

22 **Sec. 7.** RCW 90.80.065 and 2001 c 237 s 16 are each amended to read  
23 as follows:

24 A water conservancy board may be formally dissolved by the county  
25 or jointly by the counties as applicable in which it operates by  
26 adoption of a resolution of the county legislative authority or  
27 authorities. Notice of the dissolution must be provided to the  
28 director of the department. ~~((The department may petition the county  
29 legislative authority of the county or the lead county for a board to  
30 request that the board be dissolved for repeated statutory violations  
31 or demonstrated inability to perform the functions for which the board  
32 was created.))~~

33 **Sec. 8.** RCW 90.80.070 and 2004 c 10 s 4 are each amended to read  
34 as follows:

35 (1) A person proposing a transfer of a water right may elect to  
36 file an application with a water conservancy board, if a board has been

1 established for the geographic area where the water is or would be  
2 diverted, withdrawn, or used. If the person has already filed an  
3 application with the department, the person may request that the  
4 department convey the application to the conservancy board with  
5 jurisdiction and the department must promptly forward the application.  
6 A board is not required to process an application filed with the board.  
7 If a board decides that it will not process an application, it must  
8 return the application to the applicant and must inform the applicant  
9 that the application may be filed with the department. An application  
10 to the board for a transfer shall be made on a form provided by the  
11 department. A board may require an applicant to submit within a  
12 reasonable time additional information as may be required by the board  
13 in order to review and act upon the application. At a minimum, the  
14 application shall include information sufficient to establish to the  
15 board's satisfaction that a right to the quantity of water being  
16 transferred exists, and a description of any applicable limitations on  
17 the right to use water, including the point of diversion or withdrawal,  
18 place of use, source of supply, purpose of use, quantity of use  
19 permitted, time of use, period of use, and the place of storage.

20 (2)(a) The applicant for any proposed water right transfer may  
21 apply to a board for a ~~((record of))~~ decision on a transfer and the  
22 board may render a decision on the application if the water proposed to  
23 be transferred is currently diverted, withdrawn, or used within the  
24 geographic area in which the board has jurisdiction ~~((, or would be~~  
25 ~~diverted, withdrawn, or used within the geographic area in which the~~  
26 ~~board has jurisdiction if the transfer is approved))~~. However: A  
27 board may approve a transfer that includes a change in the point of  
28 diversion or withdrawal of water under a water right only if the  
29 geographic area within the jurisdiction of the board includes both the  
30 current and proposed point of diversion or withdrawal; and a board may  
31 approve a transfer that includes a change in the place of use of the  
32 water under a water right only if the geographic area within the  
33 jurisdiction of the board includes both the current and proposed place  
34 of use.

35 (b) In the case of a proposed water right transfer in which the  
36 water is currently diverted or withdrawn or would be diverted or  
37 withdrawn outside the geographic boundaries of the county or the water  
38 resource inventory area where the use is proposed to be made, the board

1 shall hold a public hearing in the county of the diversion or  
2 withdrawal or proposed diversion or withdrawal. The board shall  
3 provide for prominent publication of notice of the hearing in a  
4 newspaper of general circulation published in the county in which the  
5 hearing is to be held for the purpose of affording an opportunity for  
6 interested persons to comment upon the application. If an application  
7 is for a transfer of water out of the water resource inventory area  
8 that is the source of the water, the board shall consult with the  
9 department regarding the application.

10 (3) After an application for a transfer is filed with the board,  
11 the board shall publish notice of the application and send notice to  
12 state agencies in accordance with the requirements of RCW 90.03.280.  
13 In addition, the board shall send notice of the application to any  
14 Indian tribe with reservation lands that would be, but for RCW  
15 90.80.055(2), within the area in which the board has jurisdiction. The  
16 board shall also provide notice of the application to any Indian tribe  
17 that has requested that it be notified of applications. Any person may  
18 submit comments and other information to the board regarding the  
19 application. The comments and information may be submitted in writing  
20 or verbally at any public meeting of the board to discuss or decide on  
21 the application. The comments must be considered by the board in  
22 making its record of decision.

23 (4) If a majority of the board determines that the application is  
24 complete, and that the transfer is in accordance with RCW 90.03.380,  
25 90.03.390, or 90.44.100, the board must issue a ~~((record of))~~ decision  
26 approving the transfer ~~((, subject to review by the director))~~. In  
27 making its ~~((record of))~~ decision, the board must consider among other  
28 things whether the proposed transfer can be made without detriment or  
29 injury to existing water rights, including rights established for  
30 instream flows. The board must include in its ~~((record of))~~ decision  
31 any conditions that are deemed necessary for the transfer to qualify  
32 for approval under the applicable laws of the state. The basis for the  
33 ~~((record of))~~ decision of the board must be documented in a report of  
34 examination. ~~((The board's proposed approval must clearly state that  
35 the applicant is not permitted to proceed to effect the proposed  
36 transfer until a final decision is made by the director.))~~ In making  
37 its ~~((record of))~~ decision, the board must consider among other things

1 whether the proposed transfer can be made without detriment or injury  
2 to existing water rights, including rights established for instream  
3 flows.

4 (5) If a majority of the board determines that the application  
5 cannot be approved under the applicable laws of the state of  
6 Washington, the board must make a (~~record of~~) decision denying the  
7 application together with its report of examination documenting its  
8 (~~record of~~) decision. (~~The board's record of decision is subject to~~  
9 ~~review by the director under RCW 90.80.080.~~) In such a case, however,  
10 if a majority of the board determines that the application could be  
11 approved under the applicable laws of the state if certain conditions  
12 were added to the approval, the board may approve the application with  
13 those conditions.

14 (6) When alternates appointed under the provisions of RCW  
15 90.80.050(3) are serving as commissioners on a board, a majority vote  
16 of the board must include at least one commissioner appointed under the  
17 provisions of RCW 90.80.050(1).

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

20 (a) Review the written record before the board and any exhibits  
21 provided for the review or provided at the hearing if a hearing was  
22 held;

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

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

27 (8) An alternate serving as a commissioner shall be guided by the  
28 conflict of interest standards applicable to all commissioners under  
29 RCW 90.80.120. The board shall provide notice of an alternate sitting  
30 as a commissioner to the applicant and other participants in  
31 proceedings before the board in a timely manner to provide sufficient  
32 time for any challenges for conflict of interest to be made prior to  
33 the board's decision on the application.

34 **Sec. 9.** RCW 90.80.080 and 2001 c 237 s 12 are each amended to read  
35 as follows:

36 (1) (~~The board must provide a copy of its record of decision to~~  
37 ~~the applicant. The board shall submit its record of decision on the~~

1 ~~transfer application to the department for review. The board shall~~  
2 ~~also submit its report of examination to the department summarizing~~  
3 ~~factual findings on which the board relied in reaching its record of~~  
4 ~~decision and a copy of the files and records upon which the board's~~  
5 ~~record of decision is based. The board shall also promptly transmit~~  
6 ~~notice by mail to any person who objected to the transfer or who~~  
7 ~~requested notice of the board's record of decision)) After rendering~~  
8 ~~its decision on an application for a transfer, the board must promptly~~  
9 ~~forward to the department for recordkeeping its decision, its report of~~  
10 ~~examination that summarizes the factual findings on which the board~~  
11 ~~relied in reaching its decision, and a copy of the files and records~~  
12 ~~upon which the board's decision is based. Upon the conclusion of its~~  
13 ~~business involving a water right transfer application, a board must~~  
14 ~~promptly send the original copies of all remaining records relating to~~  
15 ~~that application to the department for recordkeeping. A board may keep~~  
16 ~~a copy of the original documents.~~

17 (2) Upon receipt of a board's ~~((record of))~~ decision, the  
18 department shall promptly post the text of the ~~((record of))~~ decision  
19 transmittal form on the department's internet site. ~~((The director~~  
20 ~~shall review each record of decision made by a board for compliance~~  
21 ~~with applicable state water law.~~

22 (3) ~~Any party to a transfer, third party who alleges his or her~~  
23 ~~water right will be impaired by the proposed transfer, or other person~~  
24 ~~may file a letter of concern or support with the department and the~~  
25 ~~department may consider the concern or support expressed in the letter.~~  
26 ~~Such letters must be received by the department within thirty days of~~  
27 ~~the department's receipt of the board's record of decision.~~

28 (4) ~~The director shall review the record of decision of the board~~  
29 ~~and shall affirm, reverse, or modify the action of the board within~~  
30 ~~forty five days of receipt. The forty five day time period may be~~  
31 ~~extended for an additional thirty days by the director or at the~~  
32 ~~request of the board or applicant. If the director fails to act within~~  
33 ~~the prescribed time period, the board's record of decision becomes the~~  
34 ~~decision of the department and is appealable as provided by RCW~~  
35 ~~90.80.090. If the director acts within the prescribed time period, the~~  
36 ~~director's decision to affirm, modify, or reverse is appealable as~~  
37 ~~provided by RCW 90.80.090, and the director's decision to remand is~~  
38 ~~appealable as provided by RCW 90.80.120(2)(b).))~~

1       **Sec. 10.** RCW 90.80.090 and 2001 c 237 s 13 are each amended to  
2 read as follows:

3       (1) The decision of ((the director to approve or deny an action to  
4 create a board, or to approve, deny, or modify)) a board on an  
5 application for a water right transfer ((either by action or inaction  
6 is appealable in the same manner as other water right decisions made  
7 pursuant to chapters 90.03 and 90.44 RCW)) is subject to review in  
8 superior court. The decision is appealable in the manner provided by  
9 chapter 34.05 RCW for appealing a decision of a state agency to  
10 superior court except that the petition for review must be filed,  
11 except as provided in subsection (2) of this section, in the superior  
12 court of the county in which the point of diversion or withdrawal of  
13 the right is located before the transfer.

14       (2) For decisions of a board on a transfer of a water right that is  
15 the subject of a general adjudication of water rights that is being  
16 litigated actively under chapter 90.03 or 90.44 RCW, the petition must  
17 be filed with the superior court conducting the adjudication, to be  
18 consolidated by the court with the general adjudication. A party to  
19 the adjudication shall be a party to the appeal under this chapter only  
20 if the party files or is served with a petition for review to the  
21 extent required by chapter 34.05 RCW.

22       **Sec. 11.** RCW 90.80.100 and 2001 c 237 s 14 are each amended to  
23 read as follows:

24       Neither the county or counties, the department, a conservancy  
25 board, or its employees, nor individual conservancy board commissioners  
26 shall be subject to any cause of action or claim for damages arising  
27 out of ((records of)) decisions on transfers made by a board under this  
28 chapter.

29       **Sec. 12.** RCW 90.80.120 and 2004 c 10 s 5 are each amended to read  
30 as follows:

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

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

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

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

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

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

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

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

33 ~~(e))~~ If ~~((the))~~ a person becomes aware of the basis for  
34 disqualification after the ~~((time for filing objections with the~~  
35 ~~department))~~ board renders its decision, the person may raise the  
36 challenge in an appeal of the ~~((department's final))~~ board's decision  
37 under RCW 90.80.090.

1       **Sec. 13.** RCW 90.80.135 and 2001 c 237 s 18 are each amended to  
2 read as follows:

3       (1) A board is subject to the requirements of chapter 42.17 RCW.  
4 Each board must establish and maintain records of its proceedings and  
5 determinations. While in the possession of the board, all such records  
6 must be made available for inspection and copies must be provided to  
7 the public on request under the provisions of chapter 42.17 RCW.

8       (2) (~~Upon the conclusion of its business involving a water right~~  
9 ~~transfer application, a board must promptly send the original copies of~~  
10 ~~all records relating to that application to the department for~~  
11 ~~recordkeeping. A board may keep a copy of the original documents.))  
12 After the board's records regarding an application are transferred to  
13 the department under RCW 90.80.080, the responsibility for making the  
14 records available under chapter 42.17 RCW is transferred to the  
15 department.~~

16       **Sec. 14.** RCW 90.80.150 and 2001 c 237 s 21 are each amended to  
17 read as follows:

18       The department shall report biennially by December 31st of each  
19 even-numbered year to the appropriate committees of the legislature on  
20 the boards formed (~~or sought to be formed~~) under the authority of  
21 this chapter, the transfer applications reviewed and other activities  
22 conducted by the boards, and the funding of such boards. Conservancy  
23 boards must provide information regarding their activities to the  
24 department to assist the department in preparing the report.

25       NEW SECTION. **Sec. 15.** The provisions of this act regarding the  
26 decisions of and the review of the decisions of water conservancy  
27 boards on applications for water right transfers apply to decisions  
28 that are rendered after the effective date of this section.

29       NEW SECTION. **Sec. 16.** RCW 90.80.901 (Reports to the legislature)  
30 and 2001 c 237 s 32 are each repealed.

31       NEW SECTION. **Sec. 17.** This act is necessary for the immediate  
32 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect  
2 immediately.

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