

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6111

Chapter 307, Laws of 2008

(partial veto)

60th Legislature
2008 Regular Session

TIDAL AND WAVE ENERGY

EFFECTIVE DATE: 06/12/08

Passed by the Senate March 8, 2008
YEAS 46 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 6, 2008
YEAS 93 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 1, 2008, 3:38 p.m., with
the exception of sections 5, 6, 8, 9
and 11 which are vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 6111** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 2, 2008

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 6111

AS AMENDED BY THE HOUSE

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By Senate Ways Means (originally sponsored by Senators Hobbs, Poulsen, Jacobsen, and Tom)

READ FIRST TIME 02/28/08.

1 AN ACT Relating to generating electricity from tidal and wave
2 energy; adding a new section to chapter 82.08 RCW; adding a new section
3 to chapter 82.12 RCW; creating new sections; and providing expiration
4 dates.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that the global
7 energy economy is undergoing significant changes creating a situation
8 where energy prices are increasingly more expensive and the sources of
9 energy increasingly less secure. Additionally, the legislature finds
10 that there is growing concern about the consequences associated with
11 greenhouse gas emissions from conventional sources of energy and the
12 need for action to address the threats of climate change. The
13 legislature finds ocean and tidal resources, as well as other forms of
14 hydrokinetic energy, will play an important role in providing clean,
15 carbon-free, reliable, and affordable energy to the citizens of
16 Washington. The legislature finds that the development of wave and
17 tidal energy technologies in Washington will create more highly valued
18 green jobs in the state.

1 (2) It is the intent of the legislature to facilitate the
2 development of clean, carbon-free, reliable, and affordable power
3 sources for the energy needs of Washington's growing economy. Also, it
4 is the intent of the legislature to help catalyze the emergence of a
5 new water-power industry that is able to export technology and
6 expertise to the rest of the country and the world. In addition, the
7 legislature finds that hydrokinetic energy technologies are in their
8 infancy and care must be taken to properly design and site these
9 facilities in order to avoid impacts on the marine environment. To
10 achieve these goals, the legislature intends to establish a public-
11 private organization that will support a sustainable approach to
12 hydrokinetic energy development aimed at economic development,
13 environmental protection, and community stability.

14 (3)(a) It is the intent of the legislature for state agencies to
15 explore a streamlined approach to environmental permit decision making
16 for wave and tidal power projects.

17 (b) To optimize the development and siting process for wave and
18 tidal power systems and to provide environmental protection, the
19 legislature finds that state regulatory and natural resource agencies,
20 public and private sector interests, tribes, local and regional
21 governments, and applicable federal agencies must work cooperatively to
22 establish common goals, minimize project siting delays, develop
23 consistency in the application of environmental standards, and
24 eliminate duplicative processes through assigned responsibilities of
25 selected permit drafting and compliance activities between state
26 agencies.

27 NEW SECTION. **Sec. 2.** The definitions in this section apply
28 throughout this act unless the context clearly requires otherwise.

29 (1) "Center" means the Washington state center for excellence in
30 hydrokinetic energy.

31 (2) "Council" means the energy facility site evaluation council.

32 (3) "Department" means the department of community, trade, and
33 economic development.

34 (4) "Hydrokinetic energy" means hydroelectric generation from ocean
35 waves, tides, and currents, from free-flowing rivers and streams, and
36 from water discharges.

1 (5) "Water discharges" means water discharges from agricultural,
2 industrial, and commercial operations, wastewater treatment plants, or
3 residential properties.

4 NEW SECTION. **Sec. 3.** The department and the council shall convene
5 and cochair a work group to develop the Washington state center for
6 excellence in hydrokinetic energy and to explore mechanisms to
7 streamline and make more efficient current permitting processes for
8 wave and tidal power projects.

9 NEW SECTION. **Sec. 4.** (1) The work group created under section 3
10 of this act consists of, but is not limited to, representatives from:

- 11 (a) The department of natural resources;
- 12 (b) The department of ecology;
- 13 (c) The department of fish and wildlife;
- 14 (d) The utilities and transportation commission;
- 15 (e) A wave energy company or tidal energy company, or both;
- 16 (f) A wave energy industry association or tidal energy industry
17 association, or both;
- 18 (g) Either a state or private university researching wave energy or
19 a state or private university researching tidal energy, or both;
- 20 (h) The Northwest Indian fisheries commission;
- 21 (i) An electrical utility;
- 22 (j) A local government;
- 23 (k) A commercial fishing association;
- 24 (l) A conservation group with expertise in energy-related issues;
- 25 (m) A conservation group with expertise in marine ecology; and
- 26 (n) A marine recreation group.

27 (2) State agencies under subsection (1) of this section that are
28 members of the council under RCW 80.50.030 shall provide their existing
29 designee members to serve on the work group in carrying out the
30 responsibilities of this act.

31 ****NEW SECTION. Sec. 5. (1) In developing the center, the work group***
32 ***created in section 3 of this act shall ensure that the center is a***
33 ***public-private entity and that the center supports a sustainable***
34 ***approach to hydrokinetic energy development aimed at economic***
35 ***development, environmental protection, and community stability.***

1 (2) The work group created in section 3 of this act shall make
2 recommendations to the legislature to include, but not be limited to,
3 the following:

4 (a) How the center will conduct and support research and
5 demonstrations of wave and tidal energy technologies in order to
6 facilitate the deployment and commercialization of these technologies
7 in Washington;

8 (b) How the center will establish and operate wave and tidal energy
9 test ranges that allow developers to demonstrate their wave and tidal
10 energy technologies;

11 (c) How the center will maintain processes to assist developers in
12 permitting their wave and tidal energy technologies;

13 (d) How the center will collect, manage, and disseminate data
14 necessary to assess statewide wave and tidal resources;

15 (e) How the center will promote Washington as the optimal location
16 for the development of and deployment of wave and tidal energy
17 technologies;

18 (f) What the public-private governance structure of the center will
19 be, considering the life sciences discovery fund as a model;

20 (g) How the center will coordinate with other governmental wave and
21 tidal institutions and initiatives in the Pacific Northwest economic
22 region;

23 (h) How the center will be funded through either state, federal, or
24 private sources of funding, or a combination of these funding sources;

25 (i) How the center will assist the state and various other entities
26 in reducing greenhouse gas emissions;

27 (j) How the center will assist other forms of hydrokinetic energy
28 technologies in addition to wave and tidal energy;

29 (k) How the center will identify and develop protocols to manage
30 issues involving competing uses of water space; and

31 (l) What types of review and data are necessary to ensure that
32 hydrokinetic energy will be designed and sited so as to avoid negative
33 impacts on marine ecosystems.

**Sec. 5 was vetoed. See message at end of chapter.*

34 ***NEW SECTION.** Sec. 6. The work group created in section 3 of this
35 act shall provide a report to the appropriate committees of the
36 legislature containing its recommendations under section 5 of this act,

1 *as well as draft legislation implementing its recommendations, by*
2 *December 1, 2008.*

**Sec. 6 was vetoed. See message at end of chapter.*

3 NEW SECTION. **Sec. 7.** (1)(a) The work group created in section 3
4 of this act shall explore mechanisms to streamline and make more
5 efficient permitting processes for wave and tidal power projects. The
6 work group may recommend development of a permit process which allows
7 for concurrent public review, consolidated appeals, and other
8 mechanisms which result in permit process efficiency. In making these
9 recommendations, the work group will ensure that there is adequate
10 environmental review of the full range of potential impacts from this
11 technology and that meaningful public involvement opportunities are
12 preserved. The work group shall also identify and make recommendations
13 of any potential barriers to the streamlining.

14 (b) The work group shall consider and make recommendations
15 regarding research relating to the marine environment. In making the
16 recommendations, the work group shall consider how future marine
17 research would add value to the existing understanding of the overall
18 marine environment and provide guidance on future research with the
19 goal of eliminating redundant research activities.

20 (2) The work group created in section 3 of this act, in developing
21 recommendations for permit streamlining, shall consider additional
22 issues that may be associated with permitting a wave or tidal energy
23 project, which include, but are not limited to:

24 (a) Disturbance or destruction of marine life, including acoustic
25 impacts;

26 (b) Toxic releases from leaks or accidental spills of liquids used
27 in those systems with working hydraulic fluids;

28 (c) Possible threat to navigation from collisions;

29 (d) Interference of mooring and anchorage lines with commercial and
30 sport fishing;

31 (e) Tidal power plants that dam estuaries that can impede sea life
32 migration and build up silt behind such facilities, impacting local
33 ecosystems; and

34 (f) Potential impacts of tidal power on tides, currents, and
35 flushing.

36 (3) By June 30, 2009, the work group created in section 3 of this
37 act shall develop a work plan that details critical issues that need to

1 be resolved to develop efficient, streamlined permitting processes for
2 wave and tidal power projects. The work group shall provide the work
3 plan to the legislature for review every six months. If the work group
4 determines that additional time is required to develop recommendations
5 for the permitting process for wave power projects, the work group
6 shall report to the legislature on the need for additional time and
7 update the work plan accordingly.

8 (4) By June 30, 2010, the work group created in section 3 of this
9 act shall provide a final report to the legislature on its findings and
10 recommendations.

11 ***NEW SECTION.** *Sec. 8. A new section is added to chapter 82.08 RCW
12 to read as follows:*

13 (1) *The tax levied by RCW 82.08.020 does not apply to sales of
14 machinery and equipment used directly in generating tidal or wave
15 energy, or to sales of or charges made for labor and services rendered
16 in respect to installing such machinery and equipment, but only if the
17 purchaser develops with such machinery, equipment, and labor a facility
18 capable of generating at least two hundred kilowatts of electricity and
19 provides the seller with an exemption certificate in a form and manner
20 prescribed by the department. The seller shall retain a copy of the
21 certificate for the seller's files.*

22 (2) *For purposes of this section and section 9 of this act:*

23 (a) *"Machinery and equipment" has the same meaning as provided in
24 RCW 82.08.02567.*

25 (b) *Machinery and equipment is "used directly" in generating
26 electricity with tidal or wave energy if it provides any part of the
27 process that captures the energy of the tidal or wave energy.*

28 (3) *This section expires June 30, 2018.*

**Sec. 8 was vetoed. See message at end of chapter.*

29 ***NEW SECTION.** *Sec. 9. A new section is added to chapter 82.12 RCW
30 to read as follows:*

31 (1) *The provisions of this chapter do not apply with respect to
32 machinery and equipment used directly in generating at least two
33 hundred kilowatts of electricity using tidal or wave energy as the
34 principal source of power, or to the use of labor and services rendered
35 in respect to installing such machinery and equipment.*

36 (2) *The definitions in section 8 of this act apply to this section.*

1 **(3) This section expires June 30, 2018.**

**Sec. 9 was vetoed. See message at end of chapter.*

2 NEW SECTION. **Sec. 10.** Sections 1 through 7 of this act expire
3 January 1, 2011.

4 *NEW SECTION. **Sec. 11.** *If specific funding for the purposes of*
5 *sections 1 through 7 of this act, referencing sections 1 through 7 of*
6 *this act by bill or chapter number, is not provided by June 30, 2008,*
7 *in the omnibus appropriations act, sections 1 through 7 of this act are*
8 **null and void.**

**Sec. 11 was vetoed. See message at end of chapter.*

Passed by the Senate March 8, 2008.

Passed by the House March 6, 2008.

Approved by the Governor April 1, 2008, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 2, 2008.

Note: Governor's explanation of partial veto is as follows:

"I am returning, without my approval as to Sections 5, 6, 8, 9, and
11, Engrossed Second Substitute Senate Bill 6111 entitled:

"AN ACT Relating to generating electricity from tidal and wave energy."

Washington State is currently working with tidal and wave energy
project proponents and federal agencies to identify what will need to
take place to specify potential environmental impacts and Engrossed
Second Substitute Senate Bill 6111 establishes a workgroup to further
this inquiry.

Sections 5 and 6 require that a public-private entity be created to
support hydrokinetic energy development, and that a report to the
Legislature be submitted in December 2008. I believe that this work
is premature until we understand the potential impact on Puget Sound
and our ocean resources.

Sections 8 and 9 exempt machinery and equipment used in generating
tidal or wave energy from state and local retail sales and use taxes
and public utility taxes. Such tax exemptions are more appropriately
considered once commercial production of tidal turbines is viable.

Section 11 is a null and void clause which, due to the veto of
Sections 5 and 6, is unnecessary.

For these reasons, I have vetoed Sections 5, 6, 8, 9 and 11 of
Engrossed Second Substitute Senate Bill 6111.

With the exception of Sections 5, 6, 8, 9, and 11, Engrossed Second
Substitute Senate Bill 6111 is approved."