

FINAL BILL REPORT

SHB 2639

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Synopsis as Enacted

Brief Description: Regarding the procurement of renewable resources.

Sponsors: By House Committee on Local Government (originally sponsored by Representatives Takko, Kretz, Blake, Condotta, VanDeWege and Haler).

House Committee on Local Government
Senate Committee on Water, Energy & Telecommunications

Background:

Overview of Public Utility Districts.

A public utility district (PUD) is a type of special purpose district authorized for the purpose of generating and distributing electricity, providing water and sewer services, and providing telecommunications services. A PUD may operate on a countywide basis or may encompass a smaller jurisdiction. However, most PUDs have jurisdictional boundaries that are coextensive with a county and function as a regional governing body with respect to providing their statutorily authorized services to the public. There are 28 operating PUDs in this state, many of which provide a mix of services: 23 provide electrical services; 19 provide water and/or wastewater services; and 13 provide wholesale broadband telecommunications services. Public utility districts are governed by a board of either three or five elected commissioners.

Joint and/or Cooperative Action Among Public Agencies.

State law authorizes PUDs, and other public agencies, to enter into agreements with each other for the joint exercise of the authority conferred upon them by statute. This grant of authority allows two or more public agencies to enter into agreements with one another for joint or cooperative action provided the agreement describes the following:

- the duration of the agreement;
- the precise organization, composition, and nature of any separate legal or administrative entity created by the agreement;
- the purpose(s) of the agreement;
- the manner of financing of the joint or cooperative undertaking;
- the system for establishing and maintaining the budget; and
- the method(s) for terminating the agreement and the disposition of property.

General Rules for Agreements for Joint and/or Cooperative Action Among Cities, Public Agencies, and Private Electrical Companies Subject to State Regulation.

Subject to specified requirements, certain public entities, including PUDs, and private electrical companies regulated either by the State of Washington or the State of Oregon, are authorized to enter into joint agreements for the undivided ownership of the following types of facilities:

- any type of facilities related to the generation and/or distribution of electric power, including nuclear power generating plants and facilities; and
- electric transmission facilities.

Such joint agreements must provide that each participant own a percentage of the facility equal to the percentage of its contribution to the acquisition or construction of the facility and each must control a like percentage of the electric output of the facility.

Authority of PUDs to Sell, Lease, or Convey their Facilities and Assets.

A PUD may sell, lease, or convey its facilities and assets in accordance with specified procedures and subject to the approval of the district voters. Generally speaking, PUDs are subject to the same regulations as cities and towns with respect to the disposition of district property.

However, the governing statutes provide numerous exceptions to the general rule requiring voter approval for the disposition of property by a PUD. These exceptions are wide-ranging and allow disposition of property without voter approval under circumstances that include the following:

- where the property lies outside the boundaries of the district and is being sold to another PUD or other public entity;
- if the property is obsolete or otherwise not useable and is no longer needed by the PUD; and
- the property is being sold to another public utility, private utility, utility contractor or governmental entity for not less than fair market value and in response to specified circumstances.

Auditing of Claims Against a PUD.

All financial claims presented against a PUD or other public entity related to contracts, materials finished, services rendered, and labor performed must be audited in accordance with specified requirements before the claim may be paid. The payment of any claim is contingent on the auditor certifying that the claim is a just, due, and unpaid obligation.

The Energy Independence Act of 2007.

Enacted pursuant to a citizen initiative approved by the voters in 2006, the Energy Independence Act (Act) requires that large utilities obtain 15 percent of their electricity from new, renewable resources such as solar and wind by the year 2020. The Act generally requires that utilities undertake cost-effective energy conservation and sets forth goals and requirements related to the realization of its stated policies. It also provides the definition of key terms found within the Act, including definitions for "renewable resource" and "eligible renewable resource."

"Renewable resource" means specified natural resources related to the generation of electrical power. Among the resources identified in the definition are the following: water, wind, solar energy, geothermal energy, landfill gas, wave/ocean/tidal power, specified types of biodiesel fuel, specified types of biomass energy, and several others.

"Eligible renewable resource" means either: (1) electricity produced by a generation facility powered by a renewable resource other than fresh water that began operation before March 31, 1999, where the facility is located in the Pacific Northwest or electricity delivered into Washington from out of state that satisfies specified requirements; or (2) electricity resulting from efficiency improvements to specified categories of hydroelectric projects in the Pacific Northwest and meeting other specified requirements.

Overview of Limited Liability Corporations.

State law authorizes the creation of several types of business-related entities with different organizational structures and requirements. Among such legally authorized entities are general partnerships, corporations, and limited liability corporations. The factors a business or other entity may consider when selecting its structure include limiting liability, taxation, transferability of interests, and desired level of formality.

A "limited liability corporation" (LLC) is formed by one or more individuals or entities through a special written agreement called a certificate of formation. The agreement details the organization of the LLC, including provisions for management, assignability of interests, and distribution of profits and losses. An LLC exists in perpetuity unless the articles of formation state an ending time or event.

Other characteristics of an LLC are:

- limited personal liability of the members for the LLC's debts and actions (similar to a corporation);
- ability for the owners to participate actively in management;
- no double taxation (profits are taxed personally at the member level, not the LLC level);
- no formal requirements concerning annual meetings and record-keeping; and
- ability to generally own property and sign contracts.

Summary:

Authority of a PUD to Participate in a Limited Liability Partnership.

LLCs are added to the categories of corporate entities that a PUD or other public agency may utilize for the purpose of entering into agreements for joint or cooperative action with other public agencies and other specified corporate entities.

Special Requirements for Joint Public/Private Agreements Regarding the Ownership of Electricity Generating Plants Powered By a "Renewable Natural Resource."

In conjunction with specified public agencies and private entities, a PUD is authorized to participate in agreements for cooperative ventures or participate in separate legal entities pertaining to the ownership of any type of electric generating plants powered by an eligible renewable resource as well as the transmission facilities related to such plants. This authority includes that required for the planning, financing, acquisition, construction, operation, and maintenance of such facilities. In addition to PUDs, the entities eligible to participate in such cooperative agreements and activities include:

- first class cities and other cities that operate electric generating facilities or distribution systems;

- any eligible public agency;
- electrical utilities subject to regulation by any state;
- rural electric cooperatives and their wholly owned subsidiaries;
- electric generation and transmission cooperatives and their wholly owned subsidiaries;
- and
- any qualifying joint operating agency or legal entity.

The agreements authorized under these requirements must contain the following provisions:

- each public agency or entity participating in the agreement must own a percentage of any common facility, or a percentage of any separate legal entity, equal to the percentage of the money furnished or the value of the property supplied by it for the undertaking; and
- each public agency or entity must own and control, or have a right to own and control, a like percentage of the electrical output of the common facility.

Agreements among PUDs, cities, and other eligible entities may provide for the formation, operation, and ownership of a separate legal entity that may own common facilities.

Public Utility District Sale of an Electric Generating Project Powered by an Eligible Renewable Resource.

A PUD may sell, convey or otherwise dispose of all or part of an electric generating project powered by an eligible renewable resource without the approval of the voters, provided the following conditions are met:

- the PUD retains the right to purchase all or part of the energy generated by the project during the period that it does not have a direct or indirect ownership interest in the project; and
- the PUD retains the option to repurchase all or part of the project at or below fair market value.

Agreements for the sale, lease, or disposition of projects powered by an eligible renewable resource may include a lease-back provision and an option to repurchase the property at the termination of the lease.

Auditing Standards Regarding Advance Payment of Obligations Owed Under a Contract.

Applicable auditing provisions are amended to allow the payment of a claim against a public agency provided the auditor finds that any advance payment is due and payable pursuant to a contract, or that such advance payment is available as an option for full or partial fulfillment of an obligation pursuant to a contract.

Prevailing Wage Requirements.

Projects implemented by PUDs and other entities participating in the development of the facilities authorized under this act must comply with state prevailing wage requirements.

Votes on Final Passage:

House	92	2	
Senate	46	2	(Senate amended)
House	93	0	(House concurred)

Effective: June 12, 2008