

SENATE BILL REPORT

ESHB 2925

As Reported by Senate Committee On:
Government Operations & Elections, February 25, 2010

Title: An act relating to impact payments of a municipally owned hydroelectric facility.

Brief Description: Concerning impact payments of a municipally owned hydroelectric facility.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Kretz, Short and Condotta).

Brief History: Passed House: 2/16/10, 93-5.

Committee Activity: Government Operations & Elections: 2/25/10 [DP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Roach, Ranking Minority Member; Benton, McDermott, Pridemore and Swecker.

Staff: Karen Epps (786-7424)

Background: Any city owning and operating a public utility and having facilities for the generation of electricity in another county must provide for the impacts of lost revenue and the public peace, health, safety, and welfare of the county, by contributing to the support of the county, city, or town government, and the school district of that county by entering into a contract with that county. Any city constructing hydroelectric generating facilities or acquiring land for the purpose of constructing hydroelectric facilities in another county, and through this construction or acquisition causes loss of revenue or places a financial burden in providing for the public peace, health, safety, welfare, and added road maintenance in the county, or causes any loss of revenues or increases the financial burden of any school district affected by the construction must enter into an agreement with the other county and school districts for the payment of monies to compensate the county and school districts for those increased financial burdens.

Summary of Bill: Any city with a population greater than 500,000 owning and operating a public utility and having facilities for the generation of electricity in another county, must provide for the impacts of lost revenue and the public peace, health, safety, and welfare of the county, by contributing to the support of the county, city, or town government, and the

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

school district of that county by entering into a contract with that county. In the event the contract expires prior to adoption of a new contract, the city must continue to compensate the county under the terms of the expired contract until a new contract is executed. For contracts that have expired prior to the effective date of the act and a new contract has not been executed, the city must compensate the county or counties under the terms of the expired contract from the time of the expiration until a new contract is executed. Additionally, the city is indebted to the county for any resulting arrearage accruing from the time of the expiration of the contract until such time as a new contract is executed by the parties. The dollar amount of such arrearage is calculated retroactively by reference to the payment terms set forth in the most recent expired compensation contract between the city and the county. In the event the contract expires, or has expired prior to the effective date of the act, and the parties are unable to reach agreement within six months of such expiration, then the parties must follow specified arbitration procedures. The city and/or its municipal utility are responsible for all arbitration costs.

A municipal-owned utility located in a city with a population greater than 500,000 that constructs or operates hydroelectric generating facilities or acquires land for the purpose of constructing or operating a facility in another county must enter into an agreement with that county for the annual payment of monies to compensate the county for loss of revenue or increased financial burden. In the event the agreement expires prior to adoption of a new agreement, the municipal-owned utility must continue to compensate the county under the terms of the expired agreement until a new agreement is executed. For agreements that have expired prior to the effective date of the act and a new agreement has not been executed, the municipal-owned utility must compensate the county or counties under the terms of the expired agreement from the time of the expiration until a new agreement is executed. Additionally, the municipal-owned utility is indebted to the county for any resulting arrearage accruing from the time of the expiration of the agreement until such time as a new agreement is executed by the parties. The dollar amount of such arrearage is calculated retroactively by reference to the payment terms set forth in the most recent expired compensation contract between the municipal-owned utility and the county. In the event the agreement expires, or has expired prior to the effective date of the act, and the parties are unable to reach agreement within six months of such expiration, then the parties must follow specified arbitration procedures. The city and/or its municipal utility are responsible for all arbitration costs.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: There are agreements between Seattle City Light and a couple of counties over the impacts of hydroelectric dams. There has been negotiation between Seattle City Light and Pend Oreille County to reach a new agreement since 2008 when the previous agreement expired. If the dam in Pend Oreille county was owned by a public utility district, the privilege tax formula would be about \$6.5 million. If

this was a private generating facility, a conservative payment would be about \$9.5 million. The escalator formula in the contract has gone down, while payment values have gone up. The total operating value for Seattle City Light of the dam is about \$877 million. The net income is about \$131 million. They sold about \$169 million in sales of surplus power. Pend Oreille has an unemployment rate of about 15 percent with an average income of about \$36,000 that is providing the natural resource that is being exported all over the west coast with a huge value to Seattle City Light. This bill is an attempt to update a 1950s law. Pend Oreille County had asked for a one year contract twice and it wasn't until the House bill moved before Seattle City Light agreed to a one year contract. The language in this bill is a compromise for Pend Oreille County as there are aspects that they do not like, but it moves them forward. Without a formula in statute, Pend Oreille will be before the Legislature again. No one arbitrates the public utility district formula.

OTHER: This issue has clearly become super-charged. It is in the interest of both of these jurisdictions to find some kind of an accord. This bill is an attempt to facilitate such an agreement. Seattle City Light has families and employees living in Pend Oreille County and it is in their best interest to have a healthy relationship with the county in which the facility is located. Negotiations are ongoing between the utility and the county and the legislation is becoming a little bit of a distraction to reaching that agreement. The amendment offered on the House floor was adopted hastily and Seattle City Light would support an amendment to fix that amendment. The method for interim payments is beneficial should the city and the county ever be in this situation again as it provides clarity to both sides. When agreements cannot be reached, arbitration would provide an alternative dispute resolution remedy that is fair, timely, and less costly. Seattle City Light opposes the current language that would require the city has to pay all costs related to the arbitration process. Seattle City Light believes this would damage the integrity of the arbitration process by creating a very uneven playing field and raise the costs. It could allow the county to incur unlimited costs for which the city would be expected to pay.

Persons Testifying: PRO: Representative Kretz, prime sponsor; Nancy Lotze, Selkirk School District; Laura Merrill, Pend Oreille County Commissioner.

OTHER: Dave Arbaugh, Jackie Kim, Seattle City Light.