

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2639

Chapter 198, Laws of 2008

60th Legislature
2008 Regular Session

RENEWABLE RESOURCES--PROCUREMENT--PUBLIC AGENCIES

EFFECTIVE DATE: 06/12/08

Passed by the House March 8, 2008
Yeas 93 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 6, 2008
Yeas 46 Nays 2

BRAD OWEN

President of the Senate

Approved March 27, 2008, 4:08 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2639** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 28, 2008

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2639

AS AMENDED BY THE SENATE

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By House Local Government (originally sponsored by Representatives Takko, Kretz, Blake, Condotta, VanDeWege, and Haler)

READ FIRST TIME 02/04/08.

1 AN ACT Relating to procurement of renewable resources by public
2 agencies; amending RCW 39.34.030, 54.44.020, 25.15.005, 54.16.180, and
3 42.24.080; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that it is in the
6 public interest for public utility districts to develop renewable
7 energy projects to meet requirements enacted by the people in
8 Initiative Measure No. 937 and goals of diversifying energy resource
9 portfolios. By developing more efficient and cost-effective renewable
10 energy projects, public utility districts will keep power costs as low
11 as possible for their customers. Consolidating and clarifying
12 statutory provisions governing various aspects of public utility
13 district renewable energy project development will reduce planning time
14 and expense to meet these objectives.

15 **Sec. 2.** RCW 39.34.030 and 2004 c 190 s 1 are each amended to read
16 as follows:

17 (1) Any power or powers, privileges or authority exercised or
18 capable of exercise by a public agency of this state may be exercised

1 and enjoyed jointly with any other public agency of this state having
2 the power or powers, privilege or authority, and jointly with any
3 public agency of any other state or of the United States to the extent
4 that laws of such other state or of the United States permit such joint
5 exercise or enjoyment. Any agency of the state government when acting
6 jointly with any public agency may exercise and enjoy all of the
7 powers, privileges and authority conferred by this chapter upon a
8 public agency.

9 (2) Any two or more public agencies may enter into agreements with
10 one another for joint or cooperative action pursuant to the provisions
11 of this chapter(~~(+—PROVIDED)~~), except that any such joint or
12 cooperative action by public agencies which are educational service
13 districts and/or school districts shall comply with the provisions of
14 RCW 28A.320.080. Appropriate action by ordinance, resolution or
15 otherwise pursuant to law of the governing bodies of the participating
16 public agencies shall be necessary before any such agreement may enter
17 into force.

18 (3) Any such agreement shall specify the following:

19 (a) Its duration;

20 (b) The precise organization, composition and nature of any
21 separate legal or administrative entity created thereby together with
22 the powers delegated thereto, provided such entity may be legally
23 created. Such entity may include a nonprofit corporation organized
24 pursuant to chapter 24.03 or 24.06 RCW whose membership is limited
25 solely to the participating public agencies or a partnership organized
26 pursuant to chapter 25.04 or 25.05 RCW whose partners are limited
27 solely to participating public agencies, or a limited liability company
28 organized under chapter 25.15 RCW whose membership is limited solely to
29 participating public agencies, and the funds of any such corporation
30 (~~(+)~~), partnership, or limited liability company shall be subject to
31 audit in the manner provided by law for the auditing of public funds;

32 (c) Its purpose or purposes;

33 (d) The manner of financing the joint or cooperative undertaking
34 and of establishing and maintaining a budget therefor;

35 (e) The permissible method or methods to be employed in
36 accomplishing the partial or complete termination of the agreement and
37 for disposing of property upon such partial or complete termination;
38 and

1 (f) Any other necessary and proper matters.

2 (4) In the event that the agreement does not establish a separate
3 legal entity to conduct the joint or cooperative undertaking, the
4 agreement shall contain, in addition to ~~((items))~~ provisions specified
5 in subsection (3)(a), (c), (d), (e), and (f) ~~((enumerated in~~
6 ~~subdivision (3) hereof))~~ of this section, ~~((contain))~~ the following:

7 (a) Provision for an administrator or a joint board responsible for
8 administering the joint or cooperative undertaking. In the case of a
9 joint board, public agencies that are party to the agreement shall be
10 represented; and

11 (b) The manner of acquiring, holding and disposing of real and
12 personal property used in the joint or cooperative undertaking. Any
13 joint board is authorized to establish a special fund with a state,
14 county, city, or district treasurer servicing an involved public agency
15 designated "Operating fund of joint board".

16 (5) No agreement made pursuant to this chapter relieves any public
17 agency of any obligation or responsibility imposed upon it by law
18 except that:

19 (a) To the extent of actual and timely performance thereof by a
20 joint board or other legal or administrative entity created by an
21 agreement made ~~((hereunder))~~ pursuant to this chapter, the performance
22 may be offered in satisfaction of the obligation or responsibility; and

23 (b) With respect to one or more public agencies purchasing or
24 otherwise contracting through a bid, proposal, or contract awarded by
25 another public agency or by a group of public agencies, any statutory
26 obligation to provide notice for bids or proposals that applies to the
27 public agencies involved is satisfied if the public agency or group of
28 public agencies that awarded the bid, proposal, or contract complied
29 with its own statutory requirements and either (i) posted the bid or
30 solicitation notice on a web site established and maintained by a
31 public agency, purchasing cooperative, or similar service provider, for
32 purposes of posting public notice of bid or proposal solicitations, or
33 (ii) provided an access link on the state's web portal to the notice.

34 (6) Financing of joint projects by agreement shall be as provided
35 by law.

36 **Sec. 3.** RCW 54.44.020 and 1997 c 230 s 2 are each amended to read
37 as follows:

1 (1) Except as provided in subsections (2) and (3) of this section,
2 cities of the first class, public utility districts organized under
3 chapter 54.08 RCW, and joint operating agencies organized under chapter
4 43.52 RCW, any such cities and public utility districts which operate
5 electric generating facilities or distribution systems and any joint
6 operating agency shall have power and authority to participate and
7 enter into agreements with each other and with electrical companies
8 which are subject to the jurisdiction of the Washington utilities and
9 transportation commission or the public utility commissioner of Oregon,
10 hereinafter called "regulated utilities", and with rural electric
11 cooperatives, including generation and transmission cooperatives for
12 the undivided ownership of any type of electric generating plants and
13 facilities, including, but not limited to, nuclear and other thermal
14 power generating plants and facilities and transmission facilities
15 including, but not limited to, related transmission facilities,
16 hereinafter called "common facilities", and for the planning,
17 financing, acquisition, construction, operation and maintenance
18 thereof. It shall be provided in such agreements that each city,
19 public utility district, or joint operating agency shall own a
20 percentage of any common facility equal to the percentage of the money
21 furnished or the value of property supplied by it for the acquisition
22 and construction thereof and shall own and control a like percentage of
23 the electrical output thereof.

24 (2) Cities of the first class, public utility districts organized
25 under chapter 54.08 RCW, and joint operating agencies organized under
26 chapter 43.52 RCW, shall have the power and authority to participate
27 and enter into agreements for the undivided ownership of a coal-fired
28 thermal electric generating plant and facility placed in operation
29 before July 1, 1975, including related common facilities, and for the
30 planning, financing, acquisition, construction, operation, and
31 maintenance of the plant and facility. It shall be provided in such
32 agreements that each city, public utility district, or joint operating
33 agency shall own a percentage of any common facility equal to the
34 percentage of the money furnished or the value of property supplied by
35 the city, district, or agency, for the acquisition and construction of
36 the facility, and shall own and control a like percentage of the
37 electrical output thereof. Cities of the first class, public utility
38 districts, and joint operating agencies may enter into agreements under

1 this subsection with each other, with regulated utilities, with rural
2 electric cooperatives, with electric companies subject to the
3 jurisdiction of the regulatory commission of any other state, and with
4 any power marketer subject to the jurisdiction of the federal energy
5 regulatory commission.

6 (3)(a) Except as provided in subsections (1) and (2) of this
7 section, cities of the first class, public utility districts organized
8 under chapter 54.08 RCW, any cities that operate electric generating
9 facilities or distribution systems, any joint operating agency
10 organized under chapter 43.52 RCW, or any separate legal entity
11 comprising two or more thereof organized under chapter 39.34 RCW shall,
12 either directly or as co-owners of a separate legal entity, have power
13 and authority to participate and enter into agreements described in (b)
14 and (c) of this subsection with each other, and with any of the
15 following, either directly or as co-owners of a separate legal entity:

16 (i) Any public agency, as that term is defined in RCW 39.34.020;

17 (ii) Electrical companies that are subject to the jurisdiction of
18 the Washington utilities and transportation commission or the
19 regulatory commission of any state; and

20 (iii) Rural electric cooperatives and generation and transmission
21 cooperatives or any wholly owned subsidiaries of either rural electric
22 cooperatives or generation and transmission cooperatives.

23 (b) Agreements may provide for:

24 (i) The undivided ownership, or indirect ownership in the case of
25 a separate legal entity, of common facilities that include any type of
26 electric generating plant powered by an eligible renewable resource, as
27 defined in RCW 19.285.030, and transmission facilities including, but
28 not limited to, related transmission facilities, and for the planning,
29 financing, acquisition, construction, operation, and maintenance
30 thereof; and

31 (ii) The formation, operation, and ownership of a separate legal
32 entity that may own the common facilities.

33 (c) Agreements must provide that each city, public utility
34 district, or joint operating agency:

35 (i) Owns a percentage of any common facility or a percentage of any
36 separate legal entity equal to the percentage of the money furnished or
37 the value of property supplied by it for the acquisition and
38 construction thereof; and

1 (ii) Owns and controls, or has a right to own and control in the
2 case of a separate legal entity, a like percentage of the electrical
3 output thereof.

4 (d) Any entity in which a public utility district participates,
5 either directly or as co-owner of a separate legal entity, in
6 constructing or developing a common facility pursuant to this
7 subsection shall comply with the provisions of chapter 39.12 RCW.

8 (4) Each participant shall defray its own interest and other
9 payments required to be made or deposited in connection with any
10 financing undertaken by it to pay its percentage of the money furnished
11 or value of property supplied by it for the planning, acquisition and
12 construction of any common facility, or any additions or betterments
13 thereto. The agreement shall provide a uniform method of determining
14 and allocating operation and maintenance expenses of the common
15 facility.

16 ~~((4))~~ (5) Each city, public utility district, joint operating
17 agency, regulated utility, and cooperatives participating in the direct
18 or indirect ownership or operation of a common facility described in
19 subsections (1) through (3) of this section shall pay all taxes
20 chargeable to its share of the common facility and the electric energy
21 generated thereby under applicable statutes as now or hereafter in
22 effect, and may make payments during preliminary work and construction
23 for any increased financial burden suffered by any county or other
24 existing taxing district in the county in which the common facility is
25 located, pursuant to agreement with such county or taxing district.

26 **Sec. 4.** RCW 25.15.005 and 2002 c 296 s 3 are each amended to read
27 as follows:

28 ~~((As used in this chapter, unless the context otherwise requires:))~~
29 The definitions in this section apply throughout this chapter unless
30 the context clearly requires otherwise.

31 (1) "Certificate of formation" means the certificate referred to in
32 RCW 25.15.070, and the certificate as amended.

33 (2) "Event of dissociation" means an event that causes a person to
34 cease to be a member as provided in RCW 25.15.130.

35 (3) "Foreign limited liability company" means an entity that is
36 formed under:

1 (a) The limited liability company laws of any state other than this
2 state; or

3 (b) The laws of any foreign country that is: (i) An unincorporated
4 association, (ii) formed under a statute pursuant to which an
5 association may be formed that affords to each of its members limited
6 liability with respect to the liabilities of the entity, and (iii) not
7 required, in order to transact business or conduct affairs in this
8 state, to be registered or qualified under Title 23B or 24 RCW, or any
9 other chapter of the Revised Code of Washington authorizing the
10 formation of a domestic entity and the registration or qualification in
11 this state of similar entities formed under the laws of a jurisdiction
12 other than this state.

13 (4) "Limited liability company" and "domestic limited liability
14 company" means a limited liability company having one or more members
15 that is organized and existing under this chapter.

16 (5) "Limited liability company agreement" means any written
17 agreement of the members, or any written statement of the sole member,
18 as to the affairs of a limited liability company and the conduct of its
19 business which is binding upon the member or members.

20 (6) "Limited liability company interest" means a member's share of
21 the profits and losses of a limited liability company and a member's
22 right to receive distributions of the limited liability company's
23 assets.

24 (7) "Manager" or "managers" means, with respect to a limited
25 liability company that has set forth in its certificate of formation
26 that it is to be managed by managers, the person, or persons designated
27 in accordance with RCW 25.15.150(2).

28 (8) "Member" means a person who has been admitted to a limited
29 liability company as a member as provided in RCW 25.15.115 and who has
30 not been dissociated from the limited liability company.

31 (9) "Person" means an individual, corporation, business trust,
32 estate, trust, partnership, limited liability company, association,
33 joint venture, government, governmental subdivision, agency, or
34 instrumentality, or a separate legal entity comprised of two or more of
35 these entities, or any other legal or commercial entity.

36 (10) "Professional limited liability company" means a limited
37 liability company which is organized for the purpose of rendering

1 professional service and whose certificate of formation sets forth that
2 it is a professional limited liability company subject to RCW
3 25.15.045.

4 (11) "Professional service" means the same as defined under RCW
5 18.100.030.

6 (12) "State" means the District of Columbia or the Commonwealth of
7 Puerto Rico or any state, territory, possession, or other jurisdiction
8 of the United States other than the state of Washington.

9 **Sec. 5.** RCW 54.16.180 and 1999 c 69 s 1 are each amended to read
10 as follows:

11 (1) A district may sell and convey, lease, or otherwise dispose of
12 all or any part of its works, plants, systems, utilities and
13 properties, after proceedings and approval by the voters of the
14 district, as provided for the lease or disposition of like properties
15 and facilities owned by cities and towns(~~(:—PROVIDED, That)~~). The
16 affirmative vote of three-fifths of the voters voting at an election on
17 the question of approval of a proposed sale, shall be necessary to
18 authorize such a sale(~~(:—PROVIDED FURTHER, That)~~).

19 (2) A district may, without the approval of the voters, sell,
20 convey, lease, or otherwise dispose of all or any part of the property
21 owned by it(~~(7)~~) that is located:

22 (a) Outside its boundaries, to another public utility district,
23 city, town or other municipal corporation (~~(without the approval of the~~
24 ~~voters)~~); or (~~(may sell, convey, lease, or otherwise dispose of to any~~
25 ~~person or public body, any part, either)~~)

26 (b) Within or without its boundaries, which has become
27 unserviceable, inadequate, obsolete, worn out or unfit to be used in
28 the operations of the system and which is no longer necessary, material
29 to, and useful in such operations, (~~(without the approval of the~~
30 ~~voters:—PROVIDED FURTHER, That)~~) to any person or public body.

31 (3) A district may sell, convey, lease or otherwise dispose of
32 items of equipment or materials to any other district, to any
33 cooperative, mutual, consumer-owned or investor-owned utility, to any
34 federal, state, or local government agency, to any contractor employed
35 by the district or any other district, utility, or agency, or any
36 customer of the district or of any other district or utility, from the
37 district's stores without voter approval or resolution of the

1 district's board, if such items of equipment or materials cannot
2 practicably be obtained on a timely basis from any other source, and
3 the amount received by the district in consideration for any such sale,
4 conveyance, lease, or other disposal of such items of equipment or
5 materials is not less than the district's cost to purchase such items
6 or the reasonable market value of equipment or materials(~~(:—PROVIDED~~
7 ~~FURTHER, That a public utility)~~).

8 (4) A district located within a county with a population of from
9 one hundred twenty-five thousand to less than two hundred ten thousand
10 may sell and convey to a city of the first class, which owns its own
11 water system, all or any part of a water system owned by (~~said public~~
12 ~~utility~~) the district where a portion of it is located within the
13 boundaries of (~~such~~) the city, without approval of the voters, upon
14 such terms and conditions as the district shall determine(~~(:—PROVIDED~~
15 ~~FURTHER, That)~~).

16 (5) A (~~public utility~~) district located in a county with a
17 population of from twelve thousand to less than eighteen thousand and
18 bordered by the Columbia river may, separately or in connection with
19 the operation of a water system, or as part of a plan for acquiring or
20 constructing and operating a water system, or in connection with the
21 creation of another or subsidiary local utility district, (~~may~~)
22 provide for the acquisition or construction, additions or improvements
23 to, or extensions of, and operation of, a sewage system within the same
24 service area as in the judgment of the district commission is necessary
25 or advisable (~~in order~~) to eliminate or avoid any existing or
26 potential danger to (~~the~~) public health (~~by reason of the~~) due to
27 lack of sewerage facilities or (~~by reason of the~~) inadequacy of
28 existing facilities(~~(:— AND PROVIDED FURTHER, That a public utility)~~).

29 (6) A district located within a county with a population of from
30 one hundred twenty-five thousand to less than two hundred ten thousand
31 bordering on Puget Sound may sell and convey to any city or town with
32 a population of less than ten thousand all or any part of a water
33 system owned by (~~said public utility~~) the district without approval
34 of the voters upon such terms and conditions as the district shall
35 determine.

36 (7) A district may sell and convey, lease, or otherwise dispose of,
37 to any person or entity without approval of the voters and upon such
38 terms and conditions as it determines, all or any part of an electric

1 generating project owned directly or indirectly by the district,
2 regardless of whether the project is completed, operable, or operating,
3 as long as:

4 (a) The project is or would be powered by an eligible renewable
5 resource as defined in RCW 19.285.030; and

6 (b) The district, or the separate legal entity in which the
7 district has an interest in the case of indirect ownership, has:

8 (i) The right to lease the project or to purchase all or any part
9 of the energy from the project during the period in which it does not
10 have a direct or indirect ownership interest in the project; and

11 (ii) An option to repurchase the project or part thereof sold,
12 conveyed, leased, or otherwise disposed of at or below fair market
13 value upon termination of the lease of the project or termination of
14 the right to purchase energy from the project. ((Public utility))

15 (8) Districts are municipal corporations for the purposes of this
16 section ((and the)). A commission shall be held to be the legislative
17 body ((and the)), a president and secretary shall have the same powers
18 and perform the same duties as ((the)) a mayor and city clerk, and the
19 district resolutions ((of the districts)) shall be held to be
20 ordinances within the meaning of ((the)) statutes governing the sale,
21 lease, or other disposal of public utilities owned by cities and towns.

22 **Sec. 6.** RCW 42.24.080 and 1995 c 301 s 72 are each amended to read
23 as follows:

24 (1) All claims presented against any county, city, district or
25 other municipal corporation or political subdivision by persons
26 furnishing materials, rendering services or performing labor, or for
27 any other contractual purpose, shall be audited, before payment, by an
28 auditing officer elected or appointed pursuant to statute or, in the
29 absence of statute, an appropriate charter provision, ordinance or
30 resolution of the municipal corporation or political subdivision. Such
31 claims shall be prepared for audit and payment on a form and in the
32 manner prescribed by the state auditor. The form shall provide for the
33 authentication and certification by such auditing officer that the
34 materials have been furnished, the services rendered ((or)), the labor
35 performed as described, or that any advance payment is due and payable
36 pursuant to a contract or is available as an option for full or partial
37 fulfillment of a contractual obligation, and that the claim is a just,

1 due and unpaid obligation against the municipal corporation or
2 political subdivision(~~(, and)~~). No claim shall be paid without such
3 authentication and certification(~~(, PROVIDED, That the certificates)~~).
4 (2) Certification as to claims of officers and employees of a
5 county, city, district or other municipal corporation or political
6 subdivision, for services rendered, shall be made by the person charged
7 with (~~the duty of~~) preparing and submitting vouchers for (~~the~~)
8 payment of services(~~, and~~). He or she shall certify that the claim
9 is just, true and unpaid, (~~which certificate~~) and that certification
10 shall be part of the voucher.

Passed by the House March 8, 2008.

Passed by the Senate March 6, 2008.

Approved by the Governor March 27, 2008.

Filed in Office of Secretary of State March 28, 2008.