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ENGROSSED SENATE BILL 6631

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State of Washington

54th Legislature

1996 Regular Session

By Senators Sutherland, West, Finkbeiner, Loveland, Heavey, Rasmussen, Hochstatter, Strannigan and Morton

Read first time 01/22/96. Referred to Committee on Energy, Telecommunications & Utilities.

1 AN ACT Relating to exempting thermal energy companies from  
2 utilities and transportation commission authority; amending RCW  
3 39.35C.080; adding a new section to chapter 80.04 RCW; creating a new  
4 section; and repealing RCW 80.62.010, 80.62.020, 80.62.030, 80.62.040,  
5 80.62.050, 80.62.060, 80.62.070, 80.62.080, 80.62.900, and 80.62.910.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds:

8 (a) The Washington utilities and transportation commission has the  
9 authority to regulate district heating suppliers on the basis of  
10 financial solvency, system design integrity, and reasonableness of  
11 contract rates and rate formulas under chapter 80.62 RCW;

12 (b) Consumers have competitive alternatives to thermal energy  
13 companies for space heating and cooling and ancillary services;

14 (c) Consumers have recourse against thermal energy companies for  
15 unfair business practices under the consumer protection act; and

16 (d) Technology and marketing opportunities have advanced since the  
17 enactment of chapter 80.62 RCW to make the provision of cooling  
18 services, as well as heating services, an economical option for  
19 consumers.

1 (2) The legislature declares that the public health, safety, and  
2 welfare does not require the regulation of thermal energy companies by  
3 the Washington utilities and transportation commission.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 80.04 RCW  
5 to read as follows:

6 (1) Nothing in this title shall authorize the commission to make or  
7 enforce any order affecting rates, tolls, rentals, contracts or charges  
8 for service rendered, or the adequacy or sufficiency of the facilities,  
9 equipment, instrumentalities, or buildings, or the reasonableness of  
10 rules or regulations made, furnished, used, supplied, or in force  
11 affecting any district thermal energy system owned and operated by any  
12 thermal energy company.

13 (2) For the purposes of this section:

14 (a) "Thermal energy company" means any private person, company,  
15 association, partnership, joint venture, or corporation engaged in or  
16 proposing to engage in developing, producing, transmitting,  
17 distributing, delivering, furnishing, or selling to or for the public  
18 thermal energy services for any beneficial use other than electricity  
19 generation;

20 (b) "District thermal energy system" means any system that provides  
21 thermal energy for space heating, space cooling, or process uses from  
22 a central plant, and that distributes the thermal energy to two or more  
23 buildings through a network of pipes;

24 (c) "Thermal energy" means heat or cold in the form of steam,  
25 heated or chilled water, or any other heated or chilled fluid or  
26 gaseous medium; and

27 (d) "Thermal energy services" means the provision of thermal energy  
28 from a district thermal energy system and includes such ancillary  
29 services as energy audits, metering, billing, maintenance, and repairs  
30 related to thermal energy.

31 NEW SECTION. **Sec. 3.** The following acts or parts of acts are each  
32 repealed:

33 (1) RCW 80.62.010 and 1987 c 522 s 1 & 1983 c 94 s 1;

34 (2) RCW 80.62.020 and 1987 c 522 s 2 & 1983 c 94 s 2;

35 (3) RCW 80.62.030 and 1983 c 94 s 3;

36 (4) RCW 80.62.040 and 1983 c 94 s 4;

37 (5) RCW 80.62.050 and 1983 c 94 s 5;

- 1 (6) RCW 80.62.060 and 1983 c 94 s 6;
- 2 (7) RCW 80.62.070 and 1983 c 94 s 7;
- 3 (8) RCW 80.62.080 and 1983 c 94 s 8;
- 4 (9) RCW 80.62.900 and 1983 c 94 s 9; and
- 5 (10) RCW 80.62.910 and 1983 c 94 s 10.

6 **Sec. 4.** RCW 39.35C.080 and 1991 c 201 s 9 are each amended to read  
7 as follows:

8 It is the intention of chapter 201, Laws of 1991 that the state and  
9 its agencies are compensated fairly for the energy provided to  
10 utilities from cogeneration at state facilities. Such compensation may  
11 include revenues from sales of electricity or thermal energy to  
12 utilities, lease of state properties, and value of thermal energy  
13 provided to the facility. It is also the intent of chapter 201, Laws  
14 of 1991 that the state and its agencies be accorded the opportunity to  
15 compete on a fair and reasonable basis to fulfill a utility's new  
16 resource acquisition needs when selling the energy produced from  
17 cogeneration projects at state facilities through energy purchase  
18 agreements.

19 (1)(a) The energy office and state agencies may participate in any  
20 utility request for resource proposal process, as either established  
21 under the rules and regulations of the utilities and transportation  
22 commission, or by the governing board of a public utility district,  
23 municipal utility, cooperative, or mutual.

24 (b) If a local utility does not have a request for resource  
25 proposal pending, the energy office or a state agency may negotiate an  
26 equitable and mutually beneficial energy purchase agreement with that  
27 utility.

28 (2) To ensure an equitable allocation of benefits to the state and  
29 its agencies, the following conditions shall apply to energy purchase  
30 agreements negotiated between utilities and state agencies:

31 (a) An energy purchase agreement shall be approved by both the  
32 energy office and the affected state agency.

33 (b) The energy office and the state agency shall work together  
34 throughout the planning and negotiation process for energy purchase  
35 agreements, unless the energy office determines that its participation  
36 will not further the purposes of this section.

37 (c) Before approving an energy purchase agreement, the energy  
38 office shall review the proposed agreement for its technical and

1 economic feasibility, the degree of certainty of benefits, the degree  
2 of financial risk assumed by the state and/or the state agency, the  
3 benefits offered to the state and/or state agency, and other such  
4 factors as the energy office deems prudent. The energy office shall  
5 approve an energy purchase agreement unless it finds that such an  
6 agreement would not result in an equitable allocation of costs and  
7 benefits, in which case the transaction shall be disapproved.

8 (3)(a) The state or state agency shall comply with and shall be  
9 bound by applicable avoided cost schedules, electric power wheeling  
10 charges, interconnection requirements, utility tariffs, and regulatory  
11 provisions to the same extent it would be required to comply and would  
12 be bound if it were a private citizen. The state shall neither seek  
13 regulatory advantage, nor change regulations, regulatory policy,  
14 process, or decisions to its advantage as a seller of cogenerated  
15 energy. Nothing contained in chapter 201, Laws of 1991 shall be  
16 construed to mandate or require public or private utilities to wheel  
17 electric energy resources within or beyond their service territories.  
18 Nothing in chapter 201, Laws of 1991 authorizes any state agency or  
19 school district to make any sale of energy or waste heat (~~as defined~~  
20 ~~by RCW 80.62.020(9)~~) beyond the explicit provisions of chapter 201,  
21 Laws of 1991. Nothing contained in chapter 201, Laws of 1991 requires  
22 a utility to purchase energy from the state or a state agency or enter  
23 into any agreement in connection with a cogeneration facility.

24 (b) The state shall neither construct, nor be party to an agreement  
25 for developing a cogeneration project at a state facility for the  
26 purpose of supplying its own electrical needs, unless it can show that  
27 such an arrangement would be in the economic interest of the state  
28 taking into account the cost of (i) interconnection requirements, as  
29 specified by the local electric utility, (ii) standby charges, as may  
30 be required by the local electric utility, and (iii) the current price  
31 of electricity offered by the local electric utility. If the local  
32 electric utility can demonstrate that the cogeneration project may  
33 place an undue burden on the electric utility, the energy office or the  
34 state agency shall attempt to negotiate a mutually beneficial agreement  
35 that would minimize the burden upon the ratepayers of the local  
36 electric utility.

37 (4) Any party to an energy purchase agreement may, within thirty  
38 days of any decision made pursuant to subsection (2)(c) of this section  
39 to disapprove the agreement made pursuant to this section, request an

1 independent reviewer who is mutually agreeable to all parties to review  
2 the decision. The parties shall within thirty days of selection submit  
3 to the independent reviewer documentation supporting their positions.  
4 The independent reviewer shall render advice regarding the validity of  
5 the disapproval within an additional thirty days.

6 (5) For the purposes of this section, "waste heat" means the  
7 thermal energy that otherwise would be released to the environment from  
8 an industrial process, electric generation, or other process.

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