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**HOUSE BILL 1964**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Doglio, Appleton, and Tarleton

AN ACT Relating to clean energy financing; and adding a new chapter to Title 36 RCW.

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

NEW SECTION. **Sec.**  The legislature finds that:

(1) The state of Washington has established targets for reducing greenhouse gas emissions, and local communities are important partners in helping to achieve those targets;

(2) The majority of the state's greenhouse gas emissions is associated with the energy consumed in the transportation and building sectors;

(3) The investment in clean energy by local communities is a public purpose of the state in meeting its greenhouse gas emission reduction targets, creating jobs, saving consumers money, and improving the health and well-being of local communities;

(4) This chapter is intended to facilitate local community investments in and financing of clean energy by authorizing the creation of clean energy districts; and

(5) It is in the interest of the people of the state of Washington to authorize the establishment of clean energy districts as independently governed, special purpose districts vested with the corporate authority included under Article VII, section 9 of the state Constitution to make local improvements in accordance with this chapter and to carry out the purposes specifically authorized under this chapter.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Clean energy" includes: (a) Energy produced using renewable energy resources, including wind, solar, tidal, and geothermal resources; (b) energy efficiency and conservation; (c) hydroelectric generation from a generation facility is located in irrigation pipes, irrigation canals, municipal water pipes, and wastewater pipes; and (d) use of nonfossil fuel and renewable energy resources for transportation.

(2) "Clean energy district" or "district" means a district created under this chapter.

(3) "Governing body" means the governing body of a clean energy district.

(4) "Project" means a clean energy project.

(5) "Qualified voter" means a person; who is a natural person; who is a voter under general state election laws, registered to vote in the state of Washington for a period of not less than thirty days before the election; and a resident in the clean energy district for a period of not less than thirty days before the election.

NEW SECTION. **Sec.**  (1) The establishment of a clean energy district may be initiated either by petition of qualified voters located within the proposed clean energy district or by resolution of the county legislative authority or authorities within which the proposed clean energy district is located.

(2)(a) A petition calling for the creation of a clean energy district, which is signed by at least ten qualified voters located within the proposed district, must be filed with the county legislative authority within which a proposed clean energy district, or the largest portion of a clean energy district, is located. If the proposed clean energy district is proposed to be located within more than one county, the county legislative authority receiving the petitions shall notify the other counties' legislative authorities of the proposal.

(b) The petition must set forth in general terms: (i) The objectives and plan of the clean energy district; (ii) the projects proposed to be completed or financed by the clean energy district that will accomplish these objectives; (iii) the boundaries of the proposed clean energy district, which may be stated in terms of sections, townships, and ranges; and (iv) any other matters deemed material by the petitioners.

(c) The jurisdiction of the county legislative authority to proceed with consideration of the creation of the proposed clean energy district must not be affected by the form of the petition or allegations on the petition.

(d) The petition must be accompanied by proof of voter registration that is sufficient, in the opinion of the county legislative authority, to evidence voter registration by the petitioners within the proposed clean energy district.

(e) A petition calling for the creation of a clean energy district must be accompanied by a bond of five thousand dollars to defray the costs incurred by the county, or counties, in considering the creation of the clean energy district.

(3) A resolution of the county legislative authority or authorities proposing the creation of a clean energy district must contain the same items as are required and permitted to be contained in a petition to create a clean energy district under subsection (2) of this section.

NEW SECTION. **Sec.**  Upon the filing of a valid petition or the adoption of a resolution under section 3 of this act, the county legislative authority must direct the county engineer to investigate the proposed boundaries of the clean energy district and the feasibility of the projects located in the county as proposed in the petition or resolution. The engineer must report to the county legislative authority within ninety days of such direction on the proposed boundaries of the clean energy district within the county and feasibility of that portion of the proposed project. If the proposed clean energy district is located in more than one county, the county legislative authority of each county must direct its county engineer to investigate and report on the parts of the proposal located within its boundaries.

NEW SECTION. **Sec.**  (1) The county legislative authority must schedule a public hearing on the proposed clean energy district if the county engineer's report indicates that the proposed projects are feasible. If the engineers of each of the counties within which a proposed clean energy district is located indicate that the proposed projects are feasible, the county legislative authorities must schedule a joint public hearing on the proposed clean energy district.

(2) The county legislative authority may schedule a public hearing on the proposed clean energy district if the county engineer's report indicates that the proposed projects are not feasible. The county legislative authorities of counties within which a proposed clean energy district is located may schedule a joint public hearing on the proposed clean energy district if one or more of the county engineers' reports indicate that the proposed projects are not feasible.

(3)(a) Notice of the public hearing must be published in a newspaper of general circulation within the proposed clean energy district, such notice shall be purchased in the manner of a general advertisement, not to be included with legal advertisements or with classified advertisements. This notice must be published at least twice, not more than twenty nor less than three days before public hearing. Additional notice shall be made as required under RCW 79.44.040.

(b) The notice must contain the following: (i) The date, time, and place of the public hearing; (ii) a statement that a particular clean energy district is proposed to be created; (iii) a general description of the proposed projects to be completed by the clean energy district; (iv) a general description of the proposed clean energy district boundaries; and (v) a statement that all affected persons may appear and present their comments in favor of or against the creation of the proposed clean energy district.

NEW SECTION. **Sec.**  (1) The county legislative authority or authorities must conduct the public hearing at the date, time, and place indicated in the notice published under section 5 of this act. Public hearings may be continued to other dates, times, and places specified by the county legislative authority or authorities before the adjournment of the public hearing. Each county legislative authority may alter those portions of boundaries of the proposed clean energy district that are located within the county, but if territory is added that was not described in the original proposed boundaries, an additional hearing on the proposal shall be held with notice being published as provided in section 5 of this act.

(2) After receiving public testimony, the county legislative authority may cause an election to be held to authorize the creation of a clean energy district if it finds that:

(a) Creation of the clean energy district will be conducive to the public health, convenience, and welfare, especially in regards to reductions in greenhouse gas emissions;

(b) Creation of the clean energy district will be of special benefit to residents and businesses within the clean energy district; and

(c) The proposed projects are feasible and economical, and that the benefits of these projects exceed the costs for the projects.

(3) If the proposed clean energy district is located within two or more counties, the county legislative authorities may cause an election to be held to authorize the creation of the clean energy district upon making the findings set forth in subsection (2) of this section.

(4) The county legislative authority or authorities may choose not to allow an election on the creation of a clean energy district to be held by either failing to act or failing to make one or more of the findings set forth in subsection (2) of this section.

NEW SECTION. **Sec.**  (1) The county legislative authority or authorities must cause an election on the question of creating the clean energy district to be held if findings as provided in section 6 of this act are made. The county legislative authority or authorities must designate a time and date for such election, which must be one of the special election dates provided for in RCW 29A.04.330, together with the site or sites at which votes are to be cast.

(2) The persons allowed to vote on the creation of a clean energy district shall be those persons who, if the clean energy district were created, would be qualified voters of the clean energy district as described in section 2 of this act. The county auditor or auditors of the counties within which the proposed clean energy district is located shall conduct the election and prepare a list of presumed eligible voters.

(3) Notices for the election must be published as provided in section 5 of this act. The clean energy district must be created if the proposition to create the clean energy district is approved by a simple majority vote of the voters voting on the proposition. The clean energy district may assume operations whenever the initial members of the governing body are appointed as provided in section 8 of this act.

(4) Any clean energy district created after July 1, 2017, may only have special assessments measured and imposed, and budgets adopted, as provided in sections 13, 14, and 15 of this act.

(5) If a clean energy district is created, the county or counties may charge the clean energy district for the costs incurred by the county engineer or engineers pursuant to section 4 of this act and the costs of the auditor or auditors related to the election to authorize the creation of the clean energy district pursuant to this section. Such county actions shall be deemed to be special benefits of the property located within the clean energy district that are paid through the imposition of special assessments.

NEW SECTION. **Sec.**  (1) Each clean energy district must be governed by a three-member governing body. The term of office for each member of a clean energy district governing body shall be six years and until his or her successor is elected and qualified. One member of the governing body shall be elected at the time of the clean energy district general election held in each even-numbered year for a term of six years beginning as soon as the election returns have been certified for assumption of office by elected officials of cities.

(2) The initial members of the governing body of a newly created clean energy district must be appointed by the legislative authority of the county within which the clean energy district, or the largest portion of the clean energy district, is located. These initial governing body members shall serve until their successors are elected and qualified at the next clean energy district general election held at least ninety days after the clean energy district is established. At that election the first elected members of the governing body must be elected. No primary elections may be held.

(3) Any qualified voter of a clean energy district may become a candidate for a position on the governing body by filing written notice of this intention with the county auditor at least thirty, but not more than sixty, days before a clean energy district general election. The county auditor, in consultation with the clean energy district, must establish the filing period. The names of all candidates for such positions must be listed alphabetically.

(4) At the first election, the candidate receiving the greatest number of votes must have a six-year term, the candidate receiving the second greatest number of votes must have a four-year term, and the candidate receiving the third greatest number of votes must have a two-year term of office. The initially elected members of a governing body must take office immediately when qualified as defined in RCW 29A.04.133. Thereafter the candidate receiving the greatest number of votes must be elected for a six-year term of office. Members of a governing body must hold their office until their successors are elected and qualified, and assume office as soon as the election returns have been certified.

(5) The requirements for the filing period and method for filing declarations of candidacy for the governing body of the district and the arrangement of candidate names on the ballot for all clean energy district elections conducted after the initial election in the district must be the same as the requirements for the initial election in the district.

(6)(a) Whenever a vacancy occurs in the governing body of a clean energy district, the legislative authority of the county within which the clean energy district, or the largest portion of the clean energy district, is located must appoint a qualified voter to serve until a person is elected at the next clean energy district general election, occurring sixty or more days after the vacancy has occurred, to serve the remainder of the unexpired term. The person so elected must take office immediately when qualified as defined in RCW 29A.04.133.

(b) If an election for the position which became vacant would otherwise have been held at this clean energy district election, only one election is held and the person elected to fill the succeeding term for that position must take office immediately when qualified, as defined in RCW 29A.04.133, and must serve both the remainder of the unexpired term and the succeeding term. A vacancy occurs upon the death, resignation, or incapacity of a governing body member or whenever the governing body member ceases to be a qualified voter of the clean energy district.

NEW SECTION. **Sec.**  (1) The members of the governing body may each receive up to ninety dollars per day spent in actual attendance at official meetings of the governing body or in performance of other official services or duties on behalf of the district. The governing body must fix the compensation to be paid to the members, secretary, and all other agents and employees of the district. Compensation for the members must not exceed eight thousand six hundred forty dollars in one calendar year.

(2) A member is entitled to reimbursement for reasonable expenses actually incurred in connection with official district business, including subsistence and lodging while away from the member's place of residence, and mileage for use of a privately owned vehicle in accordance with chapter 42.24 RCW.

(3) Any member may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office by a written waiver filed with the secretary as provided in this section. The waiver, to be effective, must be filed after the member's election, but prior to the date on which the compensation would otherwise be paid. The waiver must specify the month or period of months for which it is made.

(4) Every five years, beginning July 1, 2018, the dollar thresholds established in this section must be adjusted for inflation by the office of financial management based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items must be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

(5) A person holding office as commissioner for two or more special purpose districts may only receive that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such a commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions.

NEW SECTION. **Sec.**  Each member of a governing body of a clean energy district, whether elected or appointed, must enter into a bond payable to the clean energy district. The bond must be in the sum of not less than one thousand dollars and not more than five thousand dollars, as determined by the county legislative authority of the county within which the clean energy district or the largest portion of the clean energy district is located. The bond must be conditioned on the faithful performance of his or her duties as a member of the governing body of the clean energy district and must be filed with the county clerk of the county within which the clean energy district, or the largest portion of the clean energy district, is located.

NEW SECTION. **Sec.**  General elections must be held in each clean energy district on the first Tuesday after the first Monday in February in each even-numbered year. The auditor of the county within which a clean energy district or the largest portion of a clean energy district is located may provide for special elections whenever necessary.

NEW SECTION. **Sec.**  (1) A clean energy district created in accordance with this chapter is an independently governed, special purpose district vested with the corporate authority included under Article VII, section 9 of the state Constitution to operate programs and complete or finance local projects by special assessment in accordance with this chapter. Nothing in this chapter exempts the projects provided or facilitated by a district from the regulatory and land use permitting requirements of the county, city, or town in which the projects are to be located.

(2) Subject to the terms and conditions of an approved petition, a clean energy district has the powers necessary to carry out the specific purposes authorized under this chapter in order to carry out the specific objectives, plan, and projects identified in the approved petition including, but not limited to, the authority to:

(a) Acquire, purchase, hold, lease, finance, manage, occupy, construct, and sell real and personal property, facilities, or any interest therein, either inside or outside of the boundaries of the district, except that any such property, facilities, or interests outside the boundaries of the district must directly serve facilities or benefit properties within the district;

(b) Finance and construct projects authorized under this chapter;

(c) Enter into and perform any and all necessary contracts;

(d) Levy and enforce the collection of special assessments against the property included within a district;

(e) Enter into lease-purchase agreements with or without an option to purchase;

(f) Enter into executory conditional sales contracts, leases, and installment promissory notes;

(g) Borrow money to the extent and in the manner authorized by this chapter;

(h) Hold in trust property useful to accomplishment of the authority granted under this chapter;

(i) Issue revenue bonds in accordance with chapter 39.46 RCW and assessment bonds in accordance with chapter 35.45 RCW and the requirements of this chapter payable from revenue or assessments, respectively, of the district that is legally available to be pledged to secure the bonds;

(j) Contract with any municipal corporation, governmental, or private agencies to carry out the purposes authorized by this chapter;

(k) Sue and be sued;

(l) Accept and receive on behalf of the district any money or property donated, devised, or bequeathed to the district and carry out the terms of the donation, devise, or bequest, if it is within the powers granted by law to clean energy districts or, in the absence of such terms, expend or use the money or property for district purposes as determined by the board of supervisors;

(m) Transfer to any county, city, or other municipal corporation, without compensation, any property or other assets of the district;

(n) Hire staff and contract for service; and

(o) Do any and all lawful acts required and expedient to carry out the express authority provided in this chapter.

NEW SECTION. **Sec.**  Through the use of district revenue derived through special assessments and bonds authorized under this chapter and, consistent with the terms and conditions of a petition approved in accordance with this chapter, a clean energy district may finance all or a portion of the following costs, expenses, and projects whether located inside or outside the boundaries of an approved district:

(1) The cost, or any portion thereof, of the purchase, finance, lease, sublease, construction, expansion, improvement, or rehabilitation of any project with an estimated life of five years or longer;

(2) The planning and design work that is directly related to the purchase, construction, expansion, improvement, or rehabilitation of a project, including engineering, architectural, planning, and inspection costs;

(3) Programs and incentives to encourage private investment in clean energy; and

(4) Technical assistance and incentives to encourage residents, businesses, and nonprofit organizations to make clean energy improvements.

NEW SECTION. **Sec.**  (1) The governing body of a clean energy district may impose special assessments on property located inside the district and benefited by the projects provided, or to be provided, by the district. The requirements and powers of a district relating to the formation, assessment, collection, foreclosure, and other powers of a special assessment district are as set forth in chapters 35.43, 35.44, 35.49, and 35.50 RCW except where otherwise addressed under this chapter. In any case where the provisions of this chapter conflict with the requirements under any other chapter that applies to the formation, assessment, collection, foreclosure, or other powers of a special assessment district, the provisions of this chapter control.

(2) Except as otherwise expressly provided under this chapter, the special assessments imposed and collected on property within a district must not exceed the amount set forth in a petition or amended petition approved in accordance with this chapter.

(3) The term of the special assessment is limited to the lesser of (a) twenty-eight years or (b) two years less than the term of any bonds issued by or on behalf of the district to which the assessments or other revenue of the district is specifically dedicated, pledged, or obligated.

(4) The computation of special assessments must follow the requirements of chapter 35.44 RCW, including the authority to use any method or combination of methods to compute assessments which may be deemed by the board of supervisors to fairly reflect the benefit to the properties being assessed. The method of assessment may utilize the supplemental authority granted under chapter 35.51 RCW. A petition meeting the requirements of section 3 of this act may provide for the reduction or waiver of special assessments for low-income households as that term is defined in RCW 36.130.010.

(5) The governing body must set a date, time, and place for hearing any objections to the assessment roll and the hearing must occur no later than one hundred twenty days from final approval of formation of the district. Petitioners or representatives of petitioners serving in the governing body must not participate in the determination of the special assessment roll or vote on the confirmation of that assessment roll.

(6) The procedures and requirements for assessments, hearings on the assessment roll, filing of objections to the assessment roll, and appeals from the decision of the board approving or rejecting the assessment roll must be as set forth in RCW 35.44.010 through 35.44.020, 35.44.080 through 35.44.110, and 35.44.190 through 35.44.270.

(7) At the hearing on the assessment roll and in no event later than thirty days after the day of the hearing the governing body may adopt a resolution approving the assessment roll or may correct, revise, raise, lower, change, or modify the assessment roll or any part thereof and provide the petitioner with a detailed explanation of the changes made by the governing body.

(8) If the assessment roll is revised by the governing body in any way, then within thirty days of the board's decision the petitioner(s) must unanimously make one of the following elections: (a) Rescind the petition or (b) accept the changes made by the governing body upon which occurrence the governing body must adopt a resolution approving the assessment roll as modified by the governing body.

(9) Reassessments, assessments on omitted property, and supplemental assessments are governed by the provisions set forth under chapter 35.44 RCW.

(10) Any assessment approved under the provisions of this chapter may be segregated upon a petition of one hundred percent of the owners of the property subject to the assessment to be segregated. The segregation must be made as nearly as possible on the same basis as the original assessment was levied and approved by the board. The governing body, in approving a petition for segregation and amendment of the assessment roll, must do so in a fashion such that the total of the segregated parts of the assessment equal the assessment before segregation. As to any property originally entered upon the assessment roll, which has not been raised, no objections to the approval of the petition for segregation, the resulting assessment, or the amended assessment roll may be considered by the jurisdiction in which the district is located by the governing body or by any court on appeal. Assessments must be collected in districts pursuant to the district's previous assessment roll until the amendment to the assessment roll is finalized under this section.

(11) Special assessments must be collected by the district treasurer determined in accordance with section 17 of this act.

(12) The district treasurer responsible for collecting special assessments may account for the costs of handling the assessments and may collect a fee not to exceed the measurable costs incurred by the treasurer.

NEW SECTION. **Sec.**  (1) The clean energy district may utilize the special assessments and revenue derived in accordance with this chapter for the payment of principal and interest on bonds issued pursuant to the authority granted under this chapter to fund or reimburse the costs of projects authorized under this chapter and prior to the issuance of bonds, may utilize the revenue to directly fund the costs of providing the programs and projects authorized under this chapter on a pay-as-you-go basis.

(2) The governing body may establish; administer; and pay or otherwise dedicate, pledge, or obligate the assessments and revenue generated in accordance with this chapter into a specific fund created by or on behalf of the district in order to guarantee payment of obligations incurred in connection with projects provided under this chapter, including the payment of principal and interest on any bonds issued by or on behalf of the district.

(3) The proceeds of any bond issued pursuant to this chapter may be used to pay any and all costs related to providing the projects authorized under this chapter, including expenses incurred in connection with issuance of the bonds.

(4) The reporting requirements of RCW 39.44.210 apply to any bond issuance under this chapter.

NEW SECTION. **Sec.**  No bonds issued by or on behalf of a clean energy district are obligations of any city, town, county, or the state of Washington or any political subdivision thereof other than the district and the bonds must so state.

NEW SECTION. **Sec.**  (1) If a district includes land that is entirely within a county and the land is not surrounded entirely by a city or town, then the treasurer of that county is the treasurer of the district. If a district includes land that is entirely within a county and the land is entirely surrounded by a city or town, or, if parts of the district include land within or surrounded by more than one jurisdiction, then the board of supervisors may, with the concurrence of the treasurers of all jurisdictions within which the district lies, appoint the treasurer of any of those jurisdictions to serve as the district treasurer. Except as specifically provided under this chapter, the duties of a district treasurer are as provided under applicable law.

(2) The district treasurer must establish a clean energy district fund into which must be paid all district revenues. The district treasurer must also maintain any special funds created by the governing body of the clean energy district into which the district treasurer must place all money as the governing body may, by resolution, direct. The treasurer may create such subfunds, accounts, and subaccounts as he or she deems necessary consistent with applicable law.

(3) The district treasurer must pay assessment bonds and revenue bonds and the accrued interest thereon in accordance with their terms from the appropriate fund when interest or principal payments become due.

(4) All interest collected on clean energy district funds belongs to the district and must be deposited to its credit in the proper district funds.

NEW SECTION. **Sec.**  All assessments imposed on the respective lots, tracts, parcels of land, and other property included within the boundaries of an approved clean energy district in accordance with this chapter are a lien upon the property from the date of final approval and are paramount and superior to any other lien or encumbrance whatsoever except a lien for general taxes.

NEW SECTION. **Sec.**  Sections 1 through 18 of this act constitute a new chapter in Title 36 RCW.

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