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**SENATE BILL 5261**

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

**By** Senator Warnick

AN ACT Relating to irrigation district authority; and amending RCW 87.03.015, 87.03.0155, and 87.03.115.

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

**Sec.**  RCW 87.03.015 and 2014 c 2 s 6 are each amended to read as follows:

Any irrigation district, operating and maintaining an irrigation system, in addition to other powers conferred by law, shall have authority:

(1) To purchase and sell electric power to the inhabitants of the irrigation district for the purposes of irrigation and domestic use((~~,~~)); to finance, acquire, construct, own, and lease dams, canals, plants, transmission lines, and other power equipment and the necessary property and rights therefor and to operate, improve, repair, and maintain the same, for the generation and transmission of electrical energy for use in the operation of pumping plants and irrigation systems of the district and for sale to the inhabitants of the irrigation district for the purposes of irrigation and domestic use; and, as a further and separate grant of authority and in furtherance of a state purpose and policy of developing hydroelectric capability in connection with irrigation facilities, to construct, finance, acquire, own, lease, operate, improve, repair, and maintain, alone or jointly with other irrigation districts, boards of control, ((~~other~~)) municipal or quasi-municipal corporations or cooperatives authorized to engage in the business of distributing electricity, ((~~or~~)) electrical companies subject to the jurisdiction of the utilities and transportation commission, private commercial or industrial entities that construct or operate electric power generation or transmission facilities, or private commercial or industrial entities that acquire electric power for their own use or resale, hydroelectric facilities including but not limited to dams, canals, plants, transmission lines, other power equipment, and the necessary property and rights therefor, located within or outside the district, for the purpose of utilizing for the generation of electricity, water power made available by and as a part of the irrigation water storage, conveyance, and distribution facilities, waste ways, and drainage water facilities which serve irrigation districts, and to sell any and all the electric energy generated at any such hydroelectric facilities or the irrigation district's share of such energy, to municipal or quasi-municipal corporations ((~~and~~)) or cooperatives authorized to engage in the business of distributing electricity, ((~~and~~)) electrical companies subject to the jurisdiction of the utilities and transportation commission, private commercial or industrial entities that acquire electric power for their own use or resale, or ((~~to~~)) other irrigation districts, and on such terms and conditions as the board of directors shall determine((~~, and to enter into contracts with other irrigation districts, boards of control, other municipal or quasi-municipal corporations and cooperatives authorized to engage in the business of distributing electricity, and electrical companies subject to the jurisdiction of the utilities and transportation commission: PROVIDED, That~~)). No contract entered into under this subsection by the board of directors of any irrigation district for the sale of electrical energy from such hydroelectric facility for a period longer than forty years from the date of commercial operation of such hydroelectric facility shall be binding on the district until ratified by a majority vote of the electors of the district at an election therein, called, held, and canvassed for that purpose in the same manner as that provided by law for district bond elections.

(2) To construct, repair, purchase, maintain, or lease a system for the sale or lease of water to the owners of irrigated lands within the district for domestic purposes.

(3) To construct, repair, purchase, lease, acquire, operate and maintain a system of drains, sanitary sewers, and sewage disposal or treatment plants as herein provided.

(4) To assume, as principal or guarantor, any indebtedness to the United States under the federal reclamation laws, on account of district lands.

(5) To maintain, repair, construct, and reconstruct ditches, laterals, pipe lines, and other water conduits used or to be used in carrying water for irrigation of lands located within the boundaries of a city or town, or for the domestic use of the residents of a city or town where the owners of land within such city or town shall use such works to carry water to the boundaries of such city or town for irrigation, domestic, or other purposes within such city or town, and to charge to such city or town the pro rata proportion of the cost of such maintenance, repair, construction, and reconstruction work in proportion to the benefits received by the lands served and located within the boundaries of such city or town, and if such cost is not paid, then and in that event said irrigation district shall have the right to prevent further water deliveries through such works to the lands located within the boundaries of such city or town until such charges have been paid.

(6) To acquire, install, and maintain as a part of the irrigation district's water system the necessary water mains and fire hydrants to make water available for firefighting purposes; and in addition any such irrigation district shall have the authority to repair, operate, and maintain such hydrants and mains.

(7) To enter into contracts with other irrigation districts, boards of control, municipal or quasi-municipal corporations ((~~and~~)) or cooperatives authorized to engage in the business of distributing electricity, ((~~and~~)) electrical companies subject to the jurisdiction of the utilities and transportation commission, private commercial or industrial entities that construct or operate electric power generation or transmission facilities, or private commercial or industrial entities that acquire electric power for their own use or resale, to jointly finance, acquire, lease, construct, own, operate, improve, repair, and maintain irrigation water, domestic water, drainage and sewerage works, and electrical power works to the same extent as authorized by subsection (1) of this section, or portions of such works. If an irrigation district enters into a contract or agreement under this subsection to create a legal entity or undertaking with an investor-owned utility or a private commercial or industrial entity, that contract or agreement must provide that the irrigation district be severally liable only for its own acts and not jointly or severally liable for the acts, omissions, or obligations of an investor-owned utility or a private commercial or industrial entity. No money or property supplied by any irrigation district for the planning, financing, acquisition, construction, operation, or maintenance of any common facility may be credited or otherwise applied to the account of any investor-owned utility or private commercial or industrial entity therein, nor may the undivided share of any irrigation district in any common facility be charged, directly or indirectly, with any debt or obligation of any investor-owned utility or private commercial or industrial entity or be subject to any lien as a result thereof. No action in connection with a common facility may be binding upon any irrigation district unless authorized or approved by resolution of its board.

(8) To acquire from a water-sewer district wholly within the irrigation district's boundaries, by a conveyance without cost, the water-sewer district's water system and to operate the same to provide water for the domestic use of the irrigation district residents. As a part of its acceptance of the conveyance the irrigation district must agree to relieve the water-sewer district of responsibility for maintenance and repair of the system. Any such water-sewer district is authorized to make such a conveyance if all indebtedness of the water-sewer district, except local improvement district bonds, has been paid and the conveyance has been approved by a majority of the water-sewer district's voters voting at a general or special election.

(9) To approve and condition placement of hydroelectric generation facilities by entities other than the district on water conveyance facilities operated or maintained by the district.

This section shall not be construed as in any manner abridging any other powers of an irrigation district conferred by law.

**Sec.**  RCW 87.03.0155 and 2009 c 145 s 4 are each amended to read as follows:

(1) An irrigation district may enter into any contract or agreement with, or form a separate legal entity with, one or more of the entities or utilities specified in subsection (3) of this section for any of the following purposes:

(a) Purchasing and selling electric power; ((~~and~~))

(b) Developing or owning, or both, electric power generating or transmitting facilities, or both, including, but not limited to, facilities for generating or transmitting electric power generated by water, wind, solar power, thermal power, or batteries; and

(c) Developing or owning, or both, water storage, pumping, and transmission facilities.

(2) The contract or agreement may provide:

(a) For purchasing the capability of a project to produce or transmit electric power, in addition to actual output of a project;

(b) For making payments whether or not a project is completed, operative, or operating, and notwithstanding the suspension, interruption, interference, reduction, or curtailment of output or use of a project or the use, power, and energy contracted for or agreed to;

(c) That payments are not subject to reduction, whether by offset or otherwise; and

(d) That performance is not conditioned upon performance or nonperformance of any party or entity.

(3) Pursuant to authority granted under this section, irrigation districts may contract or enter into agreements with one or more:

(a) Agencies of the United States government;

(b) States;

(c) Municipalities;

(d) Public utility districts;

(e) Irrigation districts;

(f) Joint operating agencies;

(g) Rural electric cooperatives;

(h) Mutual corporations or associations;

(i) Investor-owned utilities; ((~~or~~))

(j) Private commercial or industrial entities that construct or operate electric power generation or transmission facilities;

(k) Private commercial or industrial entities that acquire electric power for their own use or resale; or

(l) Associations or legal entities composed of any such entities or utilities.

(4) If an irrigation district enters into a contract or agreement under this section to create a legal entity or undertaking with an investor-owned utility or a private commercial or industrial entity, that contract or agreement must provide that the irrigation district be severally liable only for its own acts and not jointly or severally liable for the acts, omissions, or obligations of an investor-owned utility or a private commercial or industrial entity. No money or property supplied by any irrigation district for the planning, financing, acquisition, construction, operation, or maintenance of any common facility may be credited or otherwise applied to the account of any investor-owned utility or private commercial or industrial entity therein, nor may the undivided share of any irrigation district in any common facility be charged, directly or indirectly, with any debt or obligation of any investor-owned utility or private commercial or industrial entity or be subject to any lien as a result thereof. No action in connection with a common facility may be binding upon any irrigation district unless authorized or approved by resolution of its board.

(5) This section may not be construed in any manner that abridges any other powers of an irrigation district conferred by law.

**Sec.**  RCW 87.03.115 and 2013 c 23 s 492 are each amended to read as follows:

(1) The directors of the district shall organize as a board and shall elect a president from their number, and appoint a secretary, who shall keep a record of their proceedings.

(2) The office of the directors and principal place of business of the district shall be at some place in the county in which the organization was effected, to be designated by the directors.

(3) The directors serving districts of five thousand acres or more shall hold a regular monthly meeting at their office on the first Tuesday in every month, or on such other day in each month as the board shall direct in its bylaws, and may adjourn any meeting from time to time as may be required for the proper transaction of business.

(4) Directors serving districts of less than five thousand acres shall hold at least quarterly meetings on a day designated by the board's bylaws, and may adjourn any meeting from time to time as may be required for the proper transaction of business.

(5) Special meetings shall be called and conducted in the manner required by chapter 42.30 RCW.

(6) All meetings of the directors must be public.

(7) A majority of the directors shall constitute a quorum for the transaction of business, and in all matters requiring action by the board there shall be a concurrence of at least a majority of the directors.

(8) All records of the board shall be open to the inspection of any electors during business hours.

(9) The board shall have the power, and it shall be its duty, to adopt a seal of the district, to manage and conduct the business and affairs of the district, to make and execute all necessary contracts, to employ and appoint such agents, officers, and employees as may be necessary and prescribe their duties, and to establish equitable bylaws, rules, and regulations for the government and management of the district, and for the equitable distribution of water to the lands within the district, upon the basis of the beneficial use thereof, and generally to perform all such acts as shall be necessary to fully carry out the provisions of this chapter: PROVIDED, That all water, the right to the use of which is acquired by the district under any contract with the United States shall be distributed and apportioned by the district in accordance with the acts of congress, and rules and regulations of the secretary of the interior until full reimbursement has been made to the United States, and in accordance with the provisions of said contract in relation thereto.

(10) The bylaws, rules, and regulations must be on file and open to inspection of any elector during regular business hours.

(11) All leases, contracts, or other form of holding any interest in any state or other public lands shall be, and the same are hereby declared to be title to and evidence of title to lands and for all purposes within this act, shall be treated as the private property of the lessee or owner of the contractual or possessory interest: PROVIDED, That nothing in this section shall be construed to affect the title of the state or other public ownership, nor shall any lien for such assessment attach to the fee simple title of the state or other public ownership.

(12) The board of directors shall have authority to develop and to sell, lease, or rent the use of: ((~~(1)~~)) (a) Water facilities and water derived from the operation of the ((~~district~~)) water facilities to such municipal and quasi-municipal entities, the state of Washington, and state entities and agencies, and public and private corporations and individuals located within and outside the boundaries of the district, and on such terms and conditions as the board of directors shall determine; ((~~and (2)~~)) (b) electric facilities and power derived from ((~~hydroelectric~~)) electric facilities authorized by RCW 87.03.015((~~(1) as now or hereafter amended~~)) or 87.03.0155, to such municipal or quasi-municipal corporations and cooperatives authorized to engage in the business of distributing electricity, electrical companies subject to the jurisdiction of the utilities and transportation commission, private commercial or industrial entities that acquire electric power for their own use or resale, and other irrigation districts, and on such terms and conditions as the board of directors shall determine((~~: PROVIDED,~~)); and (c) power derived from electric facilities authorized by RCW 87.03.015 or 87.03.0155 on such terms and conditions as the board of directors shall determine. No water shall be furnished for use outside of said district until all demands and requirements for water for use in said district are furnished and supplied by said district((~~: AND PROVIDED FURTHER, That~~)). As soon as any public lands situated within the limits of the district shall be acquired by any private person, or held under any title of private ownership, the owner thereof shall be entitled to receive his or her proportion of water as in case of other land owners, upon payment by him or her of such sums as shall be determined by the board, and at the time to be fixed by the board, which sums shall be such equitable amount as such lands should pay having regard to placing said lands on the basis of equality with other lands in the district as to benefits received, and giving credit if equitable for any sums paid as water rent by the occupant of said lands prior to the vesting of private ownership, and such lands shall also become subject to all taxes and assessments of the district thereafter imposed.

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