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SENATE BILL 5707

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State of Washington

53rd Legislature

1993 Regular Session

By Senators Pelz and Williams

Read first time 02/10/93. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to operating agency executive board per diem; and  
2 amending RCW 43.52.374.

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

4 **Sec. 1.** RCW 43.52.374 and 1983 1st ex.s. c 3 s 3 are each amended  
5 to read as follows:

6 (1) With the exception of the powers and duties of the board of  
7 directors described in RCW 43.52.370(2), the management and control of  
8 an operating agency constructing, operating, terminating, or  
9 decommissioning a nuclear power plant under a site certification  
10 agreement under chapter 80.50 RCW is vested in an executive board  
11 established under this subsection and consisting of eleven members.

12 (a) Five members of the executive board shall be elected to four-  
13 year terms by the board of directors from among the members of the  
14 board of directors. The board of directors may provide by rule for the  
15 composition of the five members of the executive board elected from  
16 among the members of the board of directors so as to reflect the member  
17 public utility districts' and cities' participation in the joint  
18 operating agency's projects. Members elected to the executive board  
19 from the board of directors are ineligible for continued membership on

1 the executive board if they cease to be members of the board of  
2 directors. The board of directors may also provide by rule for the  
3 removal of a member of the executive board, except for the outside  
4 directors. Members of the board of directors may be elected to serve  
5 successive terms on the executive board. Members elected to the  
6 executive board from the board of directors shall receive a salary, not  
7 to exceed fifty dollars a day, from the operating agency at a rate set  
8 by the board of directors.

9 (b) Six members of the executive board shall be outside directors.  
10 Three shall be selected and appointed by the board of directors, and  
11 three shall be selected and appointed by the governor and confirmed by  
12 the senate. All outside directors shall:

13 (i) Serve four-year terms on the executive board. However, of the  
14 initial members of the executive board, the board of directors and the  
15 governor shall each appoint one outside director to serve a two-year  
16 term, one outside director to serve a three-year term, and one outside  
17 director to serve a four-year term. Thereafter, all outside directors  
18 shall be appointed for four-year terms. All outside directors are  
19 eligible for reappointment;

20 (ii) Receive travel expenses on the same basis as the five members  
21 elected from the board of directors. The outside directors shall also  
22 receive a salary from the operating agency, not to exceed fifty dollars  
23 a day, as fixed by the governor;

24 (iii) Not be an officer or employee of, or in any way affiliated  
25 with, the Bonneville power administration or any electric utility  
26 conducting business in the states of Washington, Oregon, Idaho, or  
27 Montana;

28 (iv) Not be involved in the financial affairs of the operating  
29 agency as an underwriter or financial adviser of the operating agency  
30 or any of its members or any of the participants in any of the  
31 operating agency's plants; and

32 (v) Be representative of policy makers in business, finance, or  
33 science, or have expertise in the construction or management of such  
34 facilities as the operating agency is constructing or operating, or  
35 have expertise in the termination, disposition, or liquidation of  
36 corporate assets.

37 (c) The governor may remove outside directors from the executive  
38 board for incompetency, misconduct, or malfeasance in office in the  
39 same manner as state appointive officers under chapter 43.06 RCW. For

1 purposes of this subsection, misconduct shall include, but not be  
2 limited to, nonfeasance and misfeasance.

3 (2) Nothing in this chapter shall be construed to mean that an  
4 operating agency is in any manner an agency of the state. Nothing in  
5 this chapter alters or destroys the status of an operating agency as a  
6 separate municipal corporation or makes the state liable in any way or  
7 to any extent for any preexisting or future debt of the operating  
8 agency or any present or future claim against the agency.

9 (3) The eleven members of the executive board shall be selected  
10 with the objective of establishing an executive board which has the  
11 resources to effectively carry out its responsibilities. All members  
12 of the executive board shall conduct their business in a manner which  
13 in their judgment is in the interest of all ratepayers affected by the  
14 joint operating agency and its projects.

15 (4) The executive board shall elect from its members a chairman,  
16 vice chairman, and secretary, who shall serve at the pleasure of the  
17 executive board. The executive board shall adopt rules for the conduct  
18 of its meetings and the carrying out of its business. All proceedings  
19 shall be by motion or resolution and shall be recorded in the minute  
20 book, which shall be a public record. A majority of the executive  
21 board shall constitute a quorum for the transaction of business.

22 (5) With respect to any operating agency existing on April 20,  
23 1982, to which the provisions of this section are applicable:

24 (a) The board of directors shall elect five members to the  
25 executive board no later than sixty days after April 20, 1982; and

26 (b) The board of directors and the governor shall select and  
27 appoint the initial outside directors and the executive board shall  
28 hold its organizational meeting no later than sixty days after April  
29 20, 1982, and the powers and duties prescribed in this chapter shall  
30 devolve upon the executive board at that time.

31 (6) The executive board shall select and employ a managing director  
32 of the operating agency and may delegate to the managing director such  
33 authority for the management and control of the operating agency as the  
34 executive board deems appropriate. The managing director's employment  
35 is terminable at the will of the executive board.

36 (7) Members of the executive board shall be immune from civil  
37 liability for mistakes and errors of judgment in the good faith  
38 performance of acts within the scope of their official duties involving

1 the exercise of judgment and discretion. This grant of immunity shall  
2 not be construed as modifying the liability of the operating agency.

3 The operating agency shall undertake the defense of and indemnify  
4 each executive board member made a party to any civil proceeding  
5 including any threatened, pending, or completed action, suit, or  
6 proceeding, whether civil, administrative, or investigative, by reason  
7 of the fact he or she is or was a member of the executive board,  
8 against judgments, penalties, fines, settlements, and reasonable  
9 expenses, actually incurred by him or her in connection with such  
10 proceeding if he or she had conducted himself or herself in good faith  
11 and reasonably believed his or her conduct to be in the best interest  
12 of the operating agency.

13 In addition members of the executive board who are utility  
14 employees shall not be fired, forced to resign, or demoted from their  
15 utility jobs for decisions they make while carrying out their duties as  
16 members of the executive board involving the exercise of judgment and  
17 discretion.

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