
SENATE BILL 5817

State of Washington

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By Senators Brown, Sellar, T. Sheldon and Hochstatter

Read first time 02/10/1999. Referred to Committee on Energy, Technology & Telecommunications.

1 AN ACT Relating to procedures for public utility districts to
2 participate in wholesale electricity market activities; and adding a
3 new chapter to Title 54 RCW.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Independent advisor" means a business, financial, or advisory
8 firm or person: (a) With knowledge and experience in connection with
9 wholesale energy markets and general business; (b) that is acting as an
10 advisor to the public utility district and does not control or own a
11 majority interest in any other party engaged in transactions with the
12 public utility district to which the advisor is rendering advice and
13 which are made under this chapter; and (c) whose compensation is not
14 wholly based upon completion of any transaction or a percentage of any
15 transaction or series of transactions made under this chapter.

16 (2) "Wholesale electric public utility district" is a public
17 utility district that is not a full requirements customer of Bonneville
18 power administration and has elected to engage in wholesale electric

1 activities under this chapter and has implemented the measures
2 described in section 2 of this act.

3 (3) "Wholesale power" means electric capacity or energy, or rights
4 thereto, transacted for purposes of resale.

5 NEW SECTION. **Sec. 2.** (1) Prior to engaging in any wholesale
6 electric activities under section 3 or 4 of this act, a public utility
7 district shall develop and approve a written implementation plan under
8 subsection (2) of this section and adopt a resolution under subsection
9 (3) of this section.

10 (2)(a) The implementation plan shall include the following: (i) A
11 general description of how the district intends to engage in the
12 wholesale electric activities under section 3 or 4 of this act; (ii) a
13 discussion of how the public interest will be served by engaging in
14 wholesale electric activities under section 3 or 4 of this act; (iii)
15 an explanation of the provisions made for the actual and prospective
16 electric energy needs of the district; (iv) a description of the risk
17 management program and other safeguards the district will employ to
18 manage any risks that may be associated with the wholesale electric
19 activities under section 3 or 4 of this act; and (v) policies and
20 procedures governing the wholesale electricity activities under section
21 3 or 4 of this act. The plan and any amendments to it shall be
22 reviewed by an independent advisor.

23 (b) The independent advisor shall submit a report to the commission
24 that includes an analysis of the implementation plan and (i) the nature
25 of and extent to which the proposed wholesale electric activities under
26 section 3 or 4 of this act may entail financial risk, and (ii) the
27 adequacy of proposed measures to manage any potential risks. The
28 independent advisor may include in the report any recommendations the
29 advisor deems pertinent to the purposes of the analysis. The report
30 shall be advisory only and not binding upon the commission.

31 (c) The plan, along with the independent advisor's report, shall be
32 submitted to the commission for approval. At least ten days prior to
33 the public meeting at which the plan is to be considered, a notice that
34 includes a general description of the implementation plan shall be
35 published in a newspaper of general circulation in the county in which
36 the district is located. The plan may be amended by the commission
37 from time to time, as necessary, subject to the same procedure as
38 required for approval of the plan under this subsection.

1 (3) After approval of the implementation plan, the commission may
2 elect to engage in wholesale electric activities under section 3 or 4
3 of this act by adopting a resolution enabling such activities. The
4 wholesale electric activities undertaken under section 3 or 4 of this
5 act shall be consistent with the implementation plan approved under
6 subsection (2) of this section.

7 (4) A wholesale electric public utility district may at any time
8 rescind the resolution electing to engage in wholesale electric
9 activities under this chapter. After approval of a rescission
10 resolution, a district may not engage in the wholesale electric
11 activities under this chapter other than to discontinue and wind up the
12 affairs conducted under this chapter. Any such rescission shall not
13 impair or modify any contracts or leases executed prior to such
14 rescission and the public utility district shall continue to have the
15 ability to engage in the wholesale electric activities for and in
16 connection with such existing contracts and leases. A rescission shall
17 not prevent a district at any time thereafter from electing to engage
18 in wholesale activities in accordance with this chapter.

19 NEW SECTION. **Sec. 3.** A wholesale electric public utility district
20 engaging in wholesale power transactions to serve its customers' load
21 requirements may:

22 (1) Enter into contracts and agreements with any person or entity,
23 within or without the state, and may participate in the formation,
24 function, and operation and be members of or partners in: (a) A
25 limited liability partnership or limited liability company; (b) a
26 nonprofit corporation; (c) a mutual corporation or association; and (d)
27 a cooperative association, within or without the state, for carrying
28 out any of the powers authorized in this title as related to wholesale
29 power activities, except those activities set forth in section 4 of
30 this act. When participating in such an entity, the wholesale electric
31 public utility district shall not assume joint liability for the debts
32 or acts of other participants, or obtain, or acquire stock ownership or
33 purchase, sell, exchange, exercise, or otherwise perform any physical
34 or financial risk management instruments beyond those authorized in
35 subsection (3) of this section.

36 (2) Enter into transactions for the purchase or sale of wholesale
37 power under this chapter by means of a wholesale power contract or
38 series of wholesale power contracts having a total term of three years

1 or less without regard to the requirement of RCW 54.16.040. However,
2 the contract or contracts may only be made pursuant to a resolution of
3 the commission introduced at least ten days prior to the date of
4 adoption of the resolution.

5 (3) Purchase, sell, exchange, exercise, and otherwise perform any
6 risk management instrument for purposes of protecting against loss
7 resulting from price or market fluctuations or for the purposes of
8 securing the district's electrical energy supply. The wholesale
9 electric public utility district shall separately track and account for
10 the transactions undertaken under this subsection.

11 (4) A wholesale electric public utility district acting under this
12 section shall not acquire through condemnation electric generation
13 plants and facilities, accompanying transmission systems, contractual
14 rights to the output of electric generation plants and facilities, or
15 contractual rights to access transmission facilities. Nothing in this
16 section affects the authority of a public utility district when not
17 acting under this chapter to condemn property or facilities.

18 NEW SECTION. **Sec. 4.** In addition to the activities provided in
19 section 3 of this act, a wholesale public utility district that is a
20 surplus generator may:

21 (1) Enter into contracts and agreements with any person or entity,
22 within or without the state, and may participate in the formation,
23 function, and operation and be members of or partners in: (a) A
24 limited liability partnership or limited liability company; (b) a
25 nonprofit corporation; (c) a mutual corporation or association; and (d)
26 a cooperative association within or without the state for carrying out
27 the powers authorized in this title as related to wholesale power
28 activities and in this section. When participating in such an entity,
29 the wholesale public utility district shall not assume joint liability
30 for the debts or acts of other participants, obtain or acquire stock
31 ownership, or purchase, sell, exchange, exercise, or otherwise perform
32 any physical or financial risk management instruments beyond those
33 authorized in section 3(3) of this act.

34 (2) Purchase, sell, and exchange wholesale power and other services
35 related thereto without limitation on the quantity of the purchases or
36 sales, and may construct, purchase, own, control, acquire or operate
37 electric generation plants and facilities and accompanying transmission
38 systems for wholesale power transactions without limitation on the

1 quantity of the electric energy or capacity generated. Nothing in this
2 subsection is intended to modify the energy financing voter approval
3 act, chapter 80.52 RCW. A wholesale electric public utility district
4 acting under this section shall not acquire through condemnation
5 electric generation plants and facilities, accompanying transmission
6 systems, contractual rights to the output of electric generation plants
7 and facilities, or contractual rights to access transmission
8 facilities. Nothing in this section affects the authority of a public
9 utility district when not acting under this chapter to condemn property
10 or facilities.

11 (3) Lease its facilities, plants, and properties to maximize the
12 operational and economic efficiency of district's assets and may enter
13 into leaseback agreements, without regard to the procedures of RCW
14 54.16.180. The lease and leaseback agreements may contain those terms
15 and conditions as determined by the commission to be necessary,
16 including provisions to secure payments on the lease. No lease shall
17 be for a term longer than fifty years. At least ten days prior to the
18 public meeting at which the proposed lease is to be considered, the
19 commission shall cause to have published a notice that includes a
20 general description of the proposed lease transaction in a newspaper of
21 general circulation in the county in which the district is located.
22 The commission may use the procedure provided in this section or the
23 procedure set forth in RCW 54.16.180 when leasing any facilities,
24 plants, and properties.

25 (4) A public utility district is a surplus generator when during
26 the year immediately preceding the election made under section 2 of
27 this act the district's average annual net generation from projects or
28 facilities owned and operated by the district exceeds the district's
29 average annual load requirement to serve the needs of the district and
30 its inhabitants and the district continues to use its generation
31 resources to serve those needs. In the event that a district satisfies
32 the requirements in this subsection for status as a surplus generator
33 at the time of election, any subsequent changes in the district's net
34 generation or load shall not effect the district's status as a surplus
35 generator.

36 NEW SECTION. **Sec. 5.** The following are exempt from public
37 inspection and copying requirements of chapter 42.17 RCW: Records of
38 a wholesale electric public utility district obtained by the district

1 within one year of the request for disclosure that contain confidential
2 market data or pricing information relating to the purchase, sale, or
3 exchange of wholesale power or related services.

4 NEW SECTION. **Sec. 6.** The activities authorized in this chapter
5 shall be in addition to other powers previously conferred upon public
6 utility districts. This chapter is intended to clarify and supplement
7 the authorities provided under existing law. No inference may be drawn
8 that any authority granted under this chapter is not available under
9 existing law. It is the intent of the legislature that public utility
10 districts be granted the ability by this chapter to engage in the
11 activities and practices as provided in this chapter, subject to the
12 limitations set forth, in addition to the authority for such activities
13 that are express or implied in other provisions of the law. Nothing in
14 this chapter shall be construed as affecting the authorities of a
15 wholesale public utility district or any other public utility district
16 to act under existing law. Except as specifically provided, nothing in
17 this chapter shall be construed as affecting a wholesale public utility
18 district's obligations or responsibilities to its own retail customers.

19 NEW SECTION. **Sec. 7.** This act may be known and cited as the
20 "public utility district wholesale electric act."

21 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute
22 a new chapter in Title 54 RCW.

23 NEW SECTION. **Sec. 9.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

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