

# HOUSE BILL REPORT

## HB 2866

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**As Passed House:**

February 12, 2004

**Title:** An act relating to construction and operation of renewable energy projects by joint operating agencies.

**Brief Description:** Authorizing the construction and operation of renewable energy projects by joint operating agencies.

**Sponsors:** By Representatives Crouse, Sullivan and Wood.

**Brief History:**

**Committee Activity:**

Technology, Telecommunications & Energy: 1/30/04, 2/4/04 [DP].

**Floor Activity:**

Passed House: 2/12/04, 94-0.

**Brief Summary of Bill**

- Authorizes use of a competitive negotiation process by joint operating agencies for siting, construction, and operation of renewable electrical energy projects.

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### HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

**Majority Report:** Do pass. Signed by 15 members: Representatives Morris, Chair; Ruderman, Vice Chair; Sullivan, Vice Chair; Crouse, Ranking Minority Member; Anderson, Blake, Delvin, Hudgins, Kirby, McMahan, McMorris, Romero, Tom, Wallace and Wood.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Nixon, Assistant Ranking Minority Member; and Bush.

**Staff:** Pam Madson (786-7166).

**Background:**

Joint operating agencies (JOAs) are formed by cities and public utility districts that join together to develop electricity generation projects. The only JOA that is currently

operating is Energy Northwest. It operates and maintains the state's only nuclear powered electrical generation facility. Energy Northwest has 18 members (three cities and 15 public utility districts). Energy Northwest has recently developed two wind power generation sites, a solar power demonstration site, and is exploring generation using biomass, fuel cells, and ocean wave power.

The JOAs must use a sealed bid process to purchase materials, equipment and supplies costing over \$5,000 or to order work for the construction of generating facilities and associated facilities costing over \$10,000.

A JOA may use a competitive negotiation process for contracts to acquire materials, equipment and supplies or for work performed during the commercial operation of a nuclear generating project. This process may be used where an existing contract is in default or is terminated or if the managing director and the executive board of the JOA finds that the project will be completed or will operate more economically than using the sealed bid process.

The negotiated bid process for selecting a contractor includes several steps. A request for proposal is issued by the JOA along with public notice similar to that of the sealed bid process.

A pre-bid conference is held to discuss and clarify the contract requirements in the request for proposal. Any inquiries from potential offerors and the responses from the JOA are given to all potential offerors. The contract requirements may be refined during this process.

Once offerors submit proposals, further discussion and clarification takes place with each offeror. Proposals may be revised in order to obtain the best and final offers. Proposals must be opened and discussed in a manner that protects their disclosure to competing offerors during the negotiation process.

The JOA selects the offeror's proposal that is most advantageous to the JOA. The basis of the final selection must be part of the contract file. After a contract is awarded, a register of proposals is available for public inspection. Any offeror may request a briefing conference on the selection.

The contract may be a fixed price or cost-reimbursable but not a cost plus percentage of cost.

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### **Summary of Bill:**

A JOA is authorized to use a competitive negotiation process to acquire materials, equipment and supplies, or for work performed, for the siting, construction or deploying

of a renewable electrical energy generation project. A competitive negotiation process may be used if the managing director and the executive board of the operating agency find that the project operation or completion will be more economical than using the sealed bid process.

A renewable electrical generation project is a generation facility fueled by wind, solar energy, geothermal energy, landfill gas, wave or tidal action, gas produced by wastewater treatment, qualified hydropower, or biomass energy.

Procedures for selecting a contractor are substantially similar to those for selecting a contractor to operate a nuclear powered electrical generating facility.

A request for proposal is issued by the JOA along with public notice similar to that of the sealed bid process.

A pre-bid conference is held to discuss and clarify the contract requirements in the request for proposal. Any inquiries from potential offerors and the responses from the JOA are given to all potential offerors. The contract requirements may be refined during this process.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** For the last couple of years Energy Northwest has been heavily involved in developing renewable energy projects to meet the needs of its member utilities. Energy Northwest is a public entity and is required to use a sealed bid process

for renewable energy projects. There are two drawbacks with using the sealed bid process. There is no opportunity for dialogue between the agency and the bidder after submission of the bid to clarify the understanding of the agencies needs and the developer's technology. It requires selection of the lowest responsive bidder without consideration of other factors such as technical merit, scheduling and staff. There is experience with this same statutory provision for the operation of nuclear facilities. There is a strong public policy of competition in public contracting. This bill supports these competitive policies.

(With concerns) Competitive negotiation is something used in the private sector but is unusual in the public sector. The rule of thumb in the public sector is design bid build. Tax payer dollars are protected from negotiation. The bidding process is an open process. Ten years ago the Legislature passed alternate public works methods. These methods are allowed under strict guidelines. Competitive negotiation would allow the public entity to contract with whom ever they want.

**Testimony Against:** None.

**Persons Testifying:** (In support) Al Mouncer, Energy Northwest.

(With concern) Michael Transue, Associated General Contractors; and Larry Stevens, Mechanical Contractors Association/National Electrical Contractors Association.

**Persons Signed In To Testify But Not Testifying:** None.