

# HOUSE BILL REPORT

## HB 1384

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**As Reported by House Committee On:**  
Technology, Energy & Communications

**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:** Representatives Haler, B. Sullivan, Morris, Crouse, P. Sullivan, Chase and Hudgins.

**Brief History:**

**Committee Activity:**

Technology, Energy & Communications: 2/3/05, 2/24/05 [DPS].

**Brief Summary of Substitute Bill**

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

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### HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Morris, Chair; Kilmer, Vice Chair; Crouse, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Ericks, Hudgins, P. Sullivan, Sump and Wallace.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Takko.

**Staff:** Sarah Dylag (786-7109).

**Background:**

Joint operating agencies (JOAs) are formed by cities and public utility districts that join together to develop electricity generation projects. The only JOA currently operating is Energy Northwest. It operates and maintains the state's only nuclear powered electrical generation facility. Energy Northwest has recently developed a wind power generation site, a solar power demonstration site, and is exploring generation using biomass and fuel cells.

A JOA must use a sealed bid process to purchase materials, equipment and supplies costing more than \$10,000 or to order work for the construction of generating facilities and associated facilities costing more than \$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. The JOA issues a request for proposal 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 inquires 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 and the state. 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 Substitute Bill:**

A JOA's authorization to use a competitive negotiation process is extended to the acquisition of materials, equipment and supplies, or for work performed for the siting, construction or deploying of a renewable electrical energy generation project. The 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.

The competitive negotiation procedures for selecting a contractor are the same as those for selecting a contractor for a nuclear powered electrical generating facility. In addition, the selection of a contractor shall be made in an open public meeting as part of the public record.

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.

### **Substitute Bill Compared to Original Bill:**

Adds a definition of "professional competence" clarifying that responses to a joint operating agency's requests for proposal must describe the offeror's "totality of demonstrated experience, knowledge, skills, proficiency, and abilities to successfully perform the contract."

Adds a definition of "responsible offerors" clarifying that offerors who possess necessary management and financial resources, experience, organization, and the ability, capacity, and skill to successfully perform the contract are "responsible offerors" who will, consistent with the joint operating agency's request for proposals, be invited to attend discussions to clarify solicitation requirements in the request for proposals.

Provides that the selection of a contractor shall be made in an open public meeting as part of the public record.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** (In support) This bill will help joint operating agencies with renewable projects. The region is growing. Public utilities have been given the opportunity, by statute, to join together and build resources to supply power at least cost. Energy Northwest is the only body that can join together and build resources for public power. Renewable resources is what this bill is about. Lessons from the nuclear side show that, by using negotiated procurement, parties can negotiate what is needed.

(Neutral) The process could be improved by moving towards a process more like an auction, with everyone in the room and everyone discussing the proposal. That will strengthen all contractors and make the process more competitive.

**Testimony Against:** This bill could conflict with public works statutes. The term "competitive negotiation" is a new term in the context of public works. There should be some oversight and review if there is competitive negotiation. Competitive negotiation is difficult for the parties who are not favored contractors. Existing processes in current statutes will allow and result in technical expertise. Allowing contracting negotiations to occur behind closed doors could lead to abuses. The design bid build process is more objective and is appropriate when public funds are being used. There are several key terms and phrases that are undefined and the lack of definition will result in bid protests. The bill's subjective nature is a cause for concern.

**Persons Testifying:** (In support) Jim Rowland and Michael Wilson, Energy Northwest.

(Neutral) Rowland Thompson, Allied Daily Newspapers.

(Opposed) Larry Stevens, Electrical Contractors and Mechanical Contractors; and Michael Transue, Associated General Contractors.

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