

HOUSE BILL REPORT

SHB 1929

As Amended by the Senate

Title: An act relating to authorizing utilities to engage in environmental mitigation efforts.

Brief Description: Authorizing utilities to engage in environmental mitigation efforts.

Sponsors: By House Committee on Technology, Energy & Communications (originally sponsored by Representatives Hurst, Morris and Kenney).

Brief History:

Committee Activity:

Technology, Energy & Communications: 2/13/07, 2/16/07 [DPS].

Floor Activity:

Passed House: 2/28/07, 97-0.

Senate Amended.

Passed Senate: 2/2/07, 33-13.

Brief Summary of Substitute Bill

- Authorizes municipal utilities and public utility districts to develop plans to reduce their greenhouse gases emissions and to engage in greenhouse gases mitigation activities.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Morris, Chair; McCoy, Vice Chair; Crouse, Ranking Minority Member; McCune, Assistant Ranking Minority Member; Eddy, Ericksen, Hankins, Hudgins, Hurst, Takko and VanDeWege.

Staff: Kara Durbin (786-7133).

Background:

Powers of Municipal Utilities

Municipal utilities are expressly authorized by statute to perform the following functions:

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(1) to operate works or plants for the purpose of furnishing electricity or power-related facilities; (2) to regulate and control the use, distribution, and price of the electricity or facilities furnished; (3) to handle, sell, or lease equipment needed for the use, distribution, and sale of electricity; and (4) to purchase power to resell to city residents and businesses.

In addition to the authority granted to municipal utilities under statute, municipal utilities may act within their implied and incidental powers if the following four conditions are met:

- (1) the city is exercising a proprietary power;
- (2) the action is within the purpose and object of the enabling statute;
- (3) the action is not contrary to express statutory or constitutional limitations; and
- (4) the action is not arbitrary, capricious, or unreasonable.

Powers of Public Utility Districts

Public utility districts (PUDs) are municipal corporations under the Constitution and statutes of Washington. A PUD has full and exclusive authority to sell, regulate, and control the use, distribution, rates, service, charges and price of electricity. In addition, PUDs are given the power to make contracts and do all other things necessary to carry out the provisions of this title.

A PUD, as a municipal corporation, is limited to those powers that are necessarily or fairly implied in or incident to powers expressly granted by statute, as well as those that are essential to the declared object and purposes of the corporation.

Okeson v. City of Seattle

In January 2007, the Washington Supreme Court ruled in *Okeson v. City of Seattle*, No. 77888-4 (Jan. 18, 2007), that Seattle City Light lacked the authority to use ratepayer money for greenhouse gases offset contracts because the contracts were neither proprietary in nature nor sufficiently related to the purpose of supplying electricity. In reaching its conclusion, the court first concluded that Seattle City Light did not have the express statutory authority to pay other entities to reduce their greenhouse gases emissions. Second, it concluded that Seattle City Light did not act within its implied or incidental powers because Seattle City Light's offset contracts are: (1) not proprietary in nature; and (2) not within the object and purpose of the utility's enabling statute.

Summary of Substitute Bill:

Authority to Develop an Emissions Plan

A municipal utility or public utility district (PUD) may develop and make publicly available a plan for the utility or district to reduce their greenhouse gases emissions or achieve no-net emissions from all sources of greenhouse gases it owns, leases, uses, contracts for, or otherwise controls.

Authority to Mitigate Greenhouse Gases Emissions

A municipal utility or PUD may, as part of its utility operation, mitigate the environmental impacts of its operations and any power purchases. Mitigation may include, but is not limited

to, all greenhouse gases mitigation mechanisms recognized by an independent, qualified organization with proven experience in emission mitigation activities. It may also include the purchase, trade, or banking of greenhouse gases offsets or credits.

If a greenhouse gases registry is developed in the state after the effective date of this act, a utility that has purchased, traded, or banked greenhouse gases mitigation mechanisms shall receive credit in the registry.

Legislative Findings

The Legislature finds and declares that greenhouse gases offset contracts and other greenhouse gases mitigation efforts are a recognized utility purpose that confers a direct benefit on the utility's ratepayers.

EFFECT OF SENATE AMENDMENT(S):

Authorizes cities or towns to mitigate the environmental impacts of operating the following utilities: water, sewerage, storm water, surface water, or solid waste handling. Authorizes cities or towns operating water, sewerage, storm water, surface water, or solid waste handling to develop a plan to reduce greenhouse gases emissions from all sources of greenhouse gases that the utility owns, leases, contracts for, or otherwise controls.

Authorizes any county that acquires and operates utilities or conducts other proprietary, user, or ratepayer funded activities to reduce or mitigate the environmental impacts of the utility or other proprietary, user, or ratepayer funded activities.

Authorizes any county that is authorized to acquire and operate utilities or conduct other proprietary, user, or ratepayer funded activities to develop a plan to reduce the county's greenhouse gases emissions from all sources the county owns, operates, leases, uses, contracts for, or otherwise controls.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) This bill deals with what the court felt was a gap in a utility's ability to engage in mitigation activities. As a matter of public policy, it is my view that mitigation efforts are sufficiently related to delivery of power. A question of statutory authority should be resolved by the Legislature and is within the Legislature's purview.

We strongly support this bill. Global warming has long-term, dire, economic consequences for our state. It could have a devastating impact on our hydroelectric system. Power producers need to prepare for a carbon restrained future. This gives us express authority to

mitigate our environmental impact in a cost-effective, inexpensive manner. This encourages voluntary, early action by allowing municipal utilities to mitigate their greenhouse gases. We can mitigate and still offer low-cost power to our customers. Offset contracts should just be seen as another way of reducing our greenhouse gases emissions. Seattle City Light is only seeking to offset the impact that its utility operations has on the environment. Seattle City Light has been a leader in the nation in reducing greenhouse gases emissions. Because greenhouse gases are not localized, it makes sense to invest in an offset approach, which is flexible and cost-effective. This policy is consistent with the Governor's recent Climate Change Executive Order.

(Opposed) We oppose this bill. We believe the Washington Supreme Court got it right. The case law is well-founded and does not need to be overturned. If Seattle City Light went out and sought a new thermal plant, they would have to mitigate their greenhouse gases under our state's CO2 mitigation law. Seattle City Light went further than this. They can use their General Fund for this, but shouldn't use ratepayer funds.

Persons Testifying: (In support) Representative Hurst, prime sponsor; Jean Godden, City of Seattle; Peggy Duxbury, Seattle City Light; Kim Drury, Climate Solution; Miguel Perez-Gibson, Northwest Energy Coalition; and Mo McBroom, Washington Environmental Council.

(Opposed) Tim Boyd, Industrial Customers of Northwest Utilities.

Persons Signed In To Testify But Not Testifying: None.