
SUBSTITUTE HOUSE BILL 2639

State of Washington 60th Legislature 2008 Regular Session

By House Local Government (originally sponsored by Representatives Takko, Kretz, Blake, Condotta, VanDeWege, and Haler)

READ FIRST TIME 02/04/08.

1 AN ACT Relating to procurement of renewable resources by public
2 agencies; amending RCW 39.34.030, 54.44.020, 25.15.005, 54.16.180, and
3 42.24.080; and adding a new section to chapter 19.285 RCW.

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

5 **Sec. 1.** RCW 39.34.030 and 2004 c 190 s 1 are each amended to read
6 as follows:

7 (1) Any power or powers, privileges or authority exercised or
8 capable of exercise by a public agency of this state may be exercised
9 and enjoyed jointly with any other public agency of this state having
10 the power or powers, privilege or authority, and jointly with any
11 public agency of any other state or of the United States to the extent
12 that laws of such other state or of the United States permit such joint
13 exercise or enjoyment. Any agency of the state government when acting
14 jointly with any public agency may exercise and enjoy all of the
15 powers, privileges and authority conferred by this chapter upon a
16 public agency.

17 (2) Any two or more public agencies may enter into agreements with
18 one another for joint or cooperative action pursuant to the provisions
19 of this chapter: PROVIDED, That any such joint or cooperative action

1 by public agencies which are educational service districts and/or
2 school districts shall comply with the provisions of RCW 28A.320.080.
3 Appropriate action by ordinance, resolution or otherwise pursuant to
4 law of the governing bodies of the participating public agencies shall
5 be necessary before any such agreement may enter into force.

6 (3) Any such agreement shall specify the following:

7 (a) Its duration;

8 (b) The precise organization, composition and nature of any
9 separate legal or administrative entity created thereby together with
10 the powers delegated thereto, provided such entity may be legally
11 created. Such entity may include a nonprofit corporation organized
12 pursuant to chapter 24.03 or 24.06 RCW whose membership is limited
13 solely to the participating public agencies or a partnership organized
14 pursuant to chapter 25.04 or 25.05 RCW whose partners are limited
15 solely to participating public agencies, or a limited liability company
16 organized under chapter 25.15 RCW whose membership is limited solely to
17 participating public agencies, and the funds of any such corporation
18 ~~((or))~~, partnership, or limited liability company shall be subject to
19 audit in the manner provided by law for the auditing of public funds;

20 (c) Its purpose or purposes;

21 (d) The manner of financing the joint or cooperative undertaking
22 and of establishing and maintaining a budget therefor;

23 (e) The permissible method or methods to be employed in
24 accomplishing the partial or complete termination of the agreement and
25 for disposing of property upon such partial or complete termination;

26 (f) Any other necessary and proper matters.

27 (4) In the event that the agreement does not establish a separate
28 legal entity to conduct the joint or cooperative undertaking, the
29 agreement shall, in addition to items (a), (c), (d), (e) and (f)
30 enumerated in subdivision (3) hereof, contain the following:

31 (a) Provision for an administrator or a joint board responsible for
32 administering the joint or cooperative undertaking. In the case of a
33 joint board, public agencies party to the agreement shall be
34 represented;

35 (b) The manner of acquiring, holding and disposing of real and
36 personal property used in the joint or cooperative undertaking. Any
37 joint board is authorized to establish a special fund with a state,

1 county, city, or district treasurer servicing an involved public agency
2 designated "Operating fund of joint board".

3 (5) No agreement made pursuant to this chapter relieves any public
4 agency of any obligation or responsibility imposed upon it by law
5 except that:

6 (a) To the extent of actual and timely performance thereof by a
7 joint board or other legal or administrative entity created by an
8 agreement made hereunder, the performance may be offered in
9 satisfaction of the obligation or responsibility; and

10 (b) With respect to one or more public agencies purchasing or
11 otherwise contracting through a bid, proposal, or contract awarded by
12 another public agency or by a group of public agencies, any statutory
13 obligation to provide notice for bids or proposals that applies to the
14 public agencies involved is satisfied if the public agency or group of
15 public agencies that awarded the bid, proposal, or contract complied
16 with its own statutory requirements and either (i) posted the bid or
17 solicitation notice on a web site established and maintained by a
18 public agency, purchasing cooperative, or similar service provider, for
19 purposes of posting public notice of bid or proposal solicitations, or
20 (ii) provided an access link on the state's web portal to the notice.

21 (6) Financing of joint projects by agreement shall be as provided
22 by law.

23 **Sec. 2.** RCW 54.44.020 and 1997 c 230 s 2 are each amended to read
24 as follows:

25 (1) Except as provided in subsections (2) and (3) of this section,
26 cities of the first class, public utility districts organized under
27 chapter 54.08 RCW, and joint operating agencies organized under chapter
28 43.52 RCW, any such cities and public utility districts which operate
29 electric generating facilities or distribution systems and any joint
30 operating agency shall have power and authority to participate and
31 enter into agreements with each other and with electrical companies
32 which are subject to the jurisdiction of the Washington utilities and
33 transportation commission or the public utility commissioner of Oregon,
34 hereinafter called "regulated utilities", and with rural electric
35 cooperatives, including generation and transmission cooperatives for
36 the undivided ownership of any type of electric generating plants and
37 facilities, including, but not limited to nuclear and other thermal

1 power generating plants and facilities and transmission facilities
2 including, but not limited to, related transmission facilities,
3 hereinafter called "common facilities", and for the planning,
4 financing, acquisition, construction, operation and maintenance
5 thereof. It shall be provided in such agreements that each city,
6 public utility district, or joint operating agency shall own a
7 percentage of any common facility equal to the percentage of the money
8 furnished or the value of property supplied by it for the acquisition
9 and construction thereof and shall own and control a like percentage of
10 the electrical output thereof.

11 (2) Cities of the first class, public utility districts organized
12 under chapter 54.08 RCW, and joint operating agencies organized under
13 chapter 43.52 RCW, shall have the power and authority to participate
14 and enter into agreements for the undivided ownership of a coal-fired
15 thermal electric generating plant and facility placed in operation
16 before July 1, 1975, including related common facilities, and for the
17 planning, financing, acquisition, construction, operation, and
18 maintenance of the plant and facility. It shall be provided in such
19 agreements that each city, public utility district, or joint operating
20 agency shall own a percentage of any common facility equal to the
21 percentage of the money furnished or the value of property supplied by
22 the city, district, or agency, for the acquisition and construction of
23 the facility and shall own and control a like percentage of the
24 electrical output thereof. Cities of the first class, public utility
25 districts, and joint operating agencies may enter into agreements under
26 this subsection with each other, with regulated utilities, with rural
27 electric cooperatives, with electric companies subject to the
28 jurisdiction of the regulatory commission of any other state, and with
29 any power marketer subject to the jurisdiction of the federal energy
30 regulatory commission.

31 (3) Except as provided in subsections (1) and (2) of this section,
32 cities of the first class, public utility districts organized under
33 chapter 54.08 RCW, any cities that operate electric generating
34 facilities or distribution systems, any joint operating agency, or any
35 separate legal entity comprising two or more thereof organized under
36 chapter 39.34 RCW shall, either directly or as co-owners of a separate
37 legal entity, have power and authority to participate and enter into
38 agreements with each other, and with any of the following, either

1 directly or as co-owners of a separate legal entity: Any public
2 agency, as that term is defined in RCW 39.34.020, with electrical
3 companies that are subject to the jurisdiction of the Washington
4 utilities and transportation commission or the regulatory commission of
5 any state, hereinafter called "regulated utilities," and with rural
6 electric cooperatives and generation and transmission cooperatives or
7 any wholly owned subsidiaries of either rural electric cooperatives or
8 generation and transmission cooperatives, for the undivided ownership,
9 or indirect ownership in the case of a separate legal entity, of any
10 type of electric generating plants powered by an eligible renewable
11 resource as defined in RCW 19.285.030 and transmission facilities
12 including, but not limited to, related transmission facilities,
13 hereinafter called "common facilities," and for the planning,
14 financing, acquisition, construction, operation, and maintenance
15 thereof. Such an agreement must provide that each city, public utility
16 district, or joint operating agency must own a percentage of any common
17 facility or a percentage of any separate legal entity equal to the
18 percentage of the money furnished or the value of property supplied by
19 it for the acquisition and construction thereof and must own and
20 control, or have a right to own and control in the case of a separate
21 legal entity, a like percentage of the electrical output thereof.

22 (4) Each participant shall defray its own interest and other
23 payments required to be made or deposited in connection with any
24 financing undertaken by it to pay its percentage of the money furnished
25 or value of property supplied by it for the planning, acquisition and
26 construction of any common facility, or any additions or betterments
27 thereto. The agreement shall provide a uniform method of determining
28 and allocating operation and maintenance expenses of the common
29 facility.

30 ((+4)) (5) Each city, public utility district, joint operating
31 agency, regulated utility, and cooperatives participating in the direct
32 or indirect ownership or operation of a common facility as described in
33 subsections (1) through (3) of this section shall pay all taxes
34 chargeable to its share of the common facility and the electric energy
35 generated thereby under applicable statutes as now or hereafter in
36 effect, and may make payments during preliminary work and construction
37 for any increased financial burden suffered by any county or other

1 existing taxing district in the county in which the common facility is
2 located, pursuant to agreement with such county or taxing district.

3 **Sec. 3.** RCW 25.15.005 and 2002 c 296 s 3 are each amended to read
4 as follows:

5 ~~((As used in this chapter, unless the context otherwise requires:))~~
6 The definitions in this section apply throughout this chapter unless
7 the context clearly requires otherwise.

8 (1) "Certificate of formation" means the certificate referred to in
9 RCW 25.15.070, and the certificate as amended.

10 (2) "Event of dissociation" means an event that causes a person to
11 cease to be a member as provided in RCW 25.15.130.

12 (3) "Foreign limited liability company" means an entity that is
13 formed under:

14 (a) The limited liability company laws of any state other than this
15 state; or

16 (b) The laws of any foreign country that is: (i) An unincorporated
17 association, (ii) formed under a statute pursuant to which an
18 association may be formed that affords to each of its members limited
19 liability with respect to the liabilities of the entity, and (iii) not
20 required, in order to transact business or conduct affairs in this
21 state, to be registered or qualified under Title 23B or 24 RCW, or any
22 other chapter of the Revised Code of Washington authorizing the
23 formation of a domestic entity and the registration or qualification in
24 this state of similar entities formed under the laws of a jurisdiction
25 other than this state.

26 (4) "Limited liability company" and "domestic limited liability
27 company" means a limited liability company having one or more members
28 that is organized and existing under this chapter.

29 (5) "Limited liability company agreement" means any written
30 agreement of the members, or any written statement of the sole member,
31 as to the affairs of a limited liability company and the conduct of its
32 business which is binding upon the member or members.

33 (6) "Limited liability company interest" means a member's share of
34 the profits and losses of a limited liability company and a member's
35 right to receive distributions of the limited liability company's
36 assets.

1 (7) "Manager" or "managers" means, with respect to a limited
2 liability company that has set forth in its certificate of formation
3 that it is to be managed by managers, the person, or persons designated
4 in accordance with RCW 25.15.150(2).

5 (8) "Member" means a person who has been admitted to a limited
6 liability company as a member as provided in RCW 25.15.115 and who has
7 not been dissociated from the limited liability company.

8 (9) "Person" means an individual, corporation, business trust,
9 estate, trust, partnership, limited liability company, association,
10 joint venture, government, governmental subdivision, agency, or
11 instrumentality, or a separate legal entity comprised of two or more of
12 these entities, or any other legal or commercial entity.

13 (10) "Professional limited liability company" means a limited
14 liability company which is organized for the purpose of rendering
15 professional service and whose certificate of formation sets forth that
16 it is a professional limited liability company subject to RCW
17 25.15.045.

18 (11) "Professional service" means the same as defined under RCW
19 18.100.030.

20 (12) "State" means the District of Columbia or the Commonwealth of
21 Puerto Rico or any state, territory, possession, or other jurisdiction
22 of the United States other than the state of Washington.

23 **Sec. 4.** RCW 54.16.180 and 1999 c 69 s 1 are each amended to read
24 as follows:

25 A district may sell and convey, lease, or otherwise dispose of all
26 or any part of its works, plants, systems, utilities and properties,
27 after proceedings and approval by the voters of the district, as
28 provided for the lease or disposition of like properties and facilities
29 owned by cities and towns: PROVIDED, That the affirmative vote of
30 three-fifths of the voters voting at an election on the question of
31 approval of a proposed sale, shall be necessary to authorize such sale:
32 PROVIDED FURTHER, That a district may sell, convey, lease or otherwise
33 dispose of all or any part of the property owned by it, located outside
34 its boundaries, to another public utility district, city, town or other
35 municipal corporation without the approval of the voters; or may sell,
36 convey, lease, or otherwise dispose of to any person or public body,
37 any part, either within or without its boundaries, which has become

1 unserviceable, inadequate, obsolete, worn out or unfit to be used in
2 the operations of the system and which is no longer necessary, material
3 to, and useful in such operations, without the approval of the voters:
4 PROVIDED FURTHER, That a district may sell, convey, lease or otherwise
5 dispose of items of equipment or materials to any other district, to
6 any cooperative, mutual, consumer-owned or investor-owned utility, to
7 any federal, state, or local government agency, to any contractor
8 employed by the district or any other district, utility, or agency, or
9 any customer of the district or of any other district or utility, from
10 the district's stores without voter approval or resolution of the
11 district's board, if such items of equipment or materials cannot
12 practicably be obtained on a timely basis from any other source, and
13 the amount received by the district in consideration for any such sale,
14 conveyance, lease, or other disposal of such items of equipment or
15 materials is not less than the district's cost to purchase such items
16 or the reasonable market value of equipment or materials: PROVIDED
17 FURTHER, That a public utility district located within a county with a
18 population of from one hundred twenty-five thousand to less than two
19 hundred ten thousand may sell and convey to a city of the first class,
20 which owns its own water system, all or any part of a water system
21 owned by said public utility district where a portion of it is located
22 within the boundaries of such city, without approval of the voters upon
23 such terms and conditions as the district shall determine: PROVIDED
24 FURTHER, That a public utility district located in a county with a
25 population of from twelve thousand to less than eighteen thousand and
26 bordered by the Columbia river may, separately or in connection with
27 the operation of a water system, or as part of a plan for acquiring or
28 constructing and operating a water system, or in connection with the
29 creation of another or subsidiary local utility district, may provide
30 for the acquisition or construction, additions or improvements to, or
31 extensions of, and operation of a sewage system within the same service
32 area as in the judgment of the district commission is necessary or
33 advisable in order to eliminate or avoid any existing or potential
34 danger to the public health by reason of the lack of sewerage
35 facilities or by reason of the inadequacy of existing facilities: AND
36 PROVIDED FURTHER, That a public utility district located within a
37 county with a population of from one hundred twenty-five thousand to
38 less than two hundred ten thousand bordering on Puget Sound may sell

1 and convey to any city or town with a population of less than ten
2 thousand all or any part of a water system owned by said public utility
3 district without approval of the voters upon such terms and conditions
4 as the district shall determine: AND PROVIDED FURTHER, That a public
5 utility district may sell and convey, lease, or otherwise dispose of,
6 to any person or entity without approval of the voters and upon such
7 terms and conditions as the public utility district determines, all or
8 any part of an electric generating project owned directly or indirectly
9 by the public utility district, regardless of whether the project is
10 completed, operable, or operating, as long as such a project is or
11 would be powered by an eligible renewable resource as that term is
12 defined in RCW 19.285.030, and as long as the public utility district,
13 or the separate legal entity in which the district has an interest in
14 the case of indirect ownership: (1) Has the right to purchase all or
15 any part of the energy from such a project during the period it does
16 not have a direct or indirect ownership interest in the project; and
17 (2) has an option to repurchase the project or part thereof sold,
18 conveyed, leased, or otherwise disposed of at or below fair market
19 value within twenty-two years from the date of sale, conveyance, lease,
20 or other disposition. Public utility districts are municipal
21 corporations for the purposes of this section and the commission shall
22 be held to be the legislative body and the president and secretary
23 shall have the same powers and perform the same duties as the mayor and
24 city clerk and the resolutions of the districts shall be held to be
25 ordinances within the meaning of the statutes governing the sale,
26 lease, or other disposal of public utilities owned by cities and towns.

27 **Sec. 5.** RCW 42.24.080 and 1995 c 301 s 72 are each amended to read
28 as follows:

29 All claims presented against any county, city, district or other
30 municipal corporation or political subdivision by persons furnishing
31 materials, rendering services or performing labor, or for any other
32 contractual purpose, shall be audited, before payment, by an auditing
33 officer elected or appointed pursuant to statute or, in the absence of
34 statute, an appropriate charter provision, ordinance or resolution of
35 the municipal corporation or political subdivision. Such claims shall
36 be prepared for audit and payment on a form and in the manner
37 prescribed by the state auditor. The form shall provide for the

1 authentication and certification by such auditing officer that the
2 materials have been furnished, the services rendered ((~~or~~)), the labor
3 performed as described, or that any advance payment is due and payable
4 pursuant to a contract, or is available as an option for full or
5 partial fulfillment of an obligation pursuant to a contract, and that
6 the claim is a just, due and unpaid obligation against the municipal
7 corporation or political subdivision; and no claim shall be paid
8 without such authentication and certification: PROVIDED, That the
9 certificates as to claims of officers and employees of a county, city,
10 district or other municipal corporation or political subdivision, for
11 services rendered, shall be made by the person charged with the duty of
12 preparing and submitting vouchers for the payment of services, and he
13 or she shall certify that the claim is just, true and unpaid, which
14 certificate shall be part of the voucher.

15 NEW SECTION. **Sec. 6.** A new section is added to chapter 19.285 RCW
16 to read as follows:

17 A public utility district, any public or private entity, or group
18 of such entities operating in a joint or cooperative capacity,
19 participating in the construction or development of an electric
20 generation facility powered by an eligible renewable resource or
21 transmission facility, as authorized under this act, shall comply with
22 the provisions of chapter 39.12 RCW.

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