
SENATE BILL 5445

State of Washington 53rd Legislature 1993 Regular Session

By Senators Williams, McCaslin and Pelz

Read first time 01/28/93. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to joint operating agency nuclear construction
2 authority requiring site certification under chapter 80.50 RCW;
3 amending RCW 43.52.250, 43.52.300, 43.52.3411, 43.52.360, 43.52.370,
4 43.52.378, 43.52.520, and 43.52.612; and adding a new section to
5 chapter 43.52 RCW.

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

7 **Sec. 1.** RCW 43.52.250 and 1987 c 376 s 8 are each amended to read
8 as follows:

9 As used in this chapter and unless the context indicates otherwise,
10 words and phrases shall mean:

11 "District" means a public utility district as created under the
12 laws of the state of Washington authorized to engage in the business of
13 generating and/or distributing electricity.

14 "City" means any city or town in the state of Washington authorized
15 to engage in the business of generating and/or distributing
16 electricity.

17 "Canada" means Canada or any province thereof.

1 "Operating agency" or "joint operating agency" means a municipal
2 corporation created pursuant to RCW 43.52.360(~~(, as now or hereafter~~
3 ~~amended)~~).

4 "Board of directors" means the board established under RCW
5 43.52.370.

6 "Executive board" means the board established under RCW 43.52.374.

7 "Board" means the board of directors of the joint operating agency
8 unless the operating agency is (~~(constructing,)~~) operating,
9 terminating, or decommissioning a nuclear power plant under a site
10 certification agreement under chapter 80.50 RCW, in which case "board"
11 means the executive board.

12 "Public utility" means any person, firm or corporation, political
13 subdivision or governmental subdivision including cities, towns and
14 public utility districts engaged in or authorized to engage in the
15 business of generating, transmitting or distributing electric energy.

16 "Revenue bonds or warrants" means bonds, notes, bond anticipation
17 notes, warrants, certificates of indebtedness, commercial paper,
18 refunding or renewal obligations, payable from a special fund or
19 revenues of the utility properties operated by the joint operating
20 agency.

21 "Electrical resources" means both electric energy and conservation.

22 "Electrical energy" means electric energy produced by any means
23 including water power, steam power, nuclear power, and conservation.

24 "Conservation" means any reduction in electric power consumption as
25 a result of increases in efficiency of energy use, production, or
26 distribution.

27 **Sec. 2.** RCW 43.52.300 and 1977 ex.s. c 184 s 4 are each amended to
28 read as follows:

29 An operating agency formed under RCW 43.52.360 shall have
30 authority:

31 (1) To generate, produce, transmit, deliver, exchange, purchase or
32 sell electric energy and to enter into contracts for any or all such
33 purposes.

34 (2) To construct except for the generation of electricity by
35 nuclear power, condemn, purchase, lease, acquire, add to, extend,
36 maintain, improve, operate, develop except for the generation of
37 electricity by nuclear power, and regulate plants, works and facilities
38 for the generation and/or transmission of electric energy, either

1 within or without the state of Washington, and to take, condemn,
2 purchase, lease and acquire any real or personal, public or private
3 property, franchise and property rights, including but not limited to
4 state, county and school lands and properties, for any of the purposes
5 herein set forth and for any facilities or works necessary or
6 convenient for use in the construction, maintenance or operation of any
7 such works, plants and facilities; provided that an operating agency
8 shall not be authorized to acquire by condemnation any plants, works
9 and facilities owned and operated by any city or district, or by a
10 privately owned public utility. An operating agency shall be
11 authorized to contract for and to acquire by lease or purchase from the
12 United States or any of its agencies, any plants, works or facilities
13 for the generation and transmission of electricity and any real or
14 personal property necessary or convenient for use in connection
15 therewith.

16 (3) To negotiate and enter into contracts with the United States or
17 any of its agencies, with any state or its agencies, with Canada or its
18 agencies or with any district or city of this state, for the lease,
19 purchase, construction except for the generation of electricity by
20 nuclear power, extension, betterment, acquisition, operation and
21 maintenance of all or any part of any electric generating and
22 transmission plants and reservoirs, works and facilities or rights
23 necessary thereto, either within or without the state of Washington,
24 and for the marketing of the energy produced therefrom. Such
25 negotiations or contracts shall be carried on and concluded with due
26 regard to the position and laws of the United States in respect to
27 international agreements.

28 (4) To negotiate and enter into contracts for the purchase, sale,
29 exchange, transmission or use of electric energy or falling water with
30 any person, firm or corporation, including political subdivisions and
31 agencies of any state of Canada, or of the United States, at fair and
32 nondiscriminating rates.

33 (5) To apply to the appropriate agencies of the state of
34 Washington, the United States or any thereof, and to Canada and/or to
35 any other proper agency for such permits, licenses or approvals as may
36 be necessary, and to construct except for the generation of electricity
37 by nuclear power, maintain and operate works, plants and facilities in
38 accordance with such licenses or permits, and to obtain, hold and use

1 such licenses and permits in the same manner as any other person or
2 operating unit.

3 (6) To establish rates for electric energy sold or transmitted by
4 the operating agency. When any revenue bonds or warrants are
5 outstanding the operating agency shall have the power and shall be
6 required to establish and maintain and collect rates or charges for
7 electric energy, falling water and other services sold, furnished or
8 supplied by the operating agency which shall be fair and
9 nondiscriminatory and adequate to provide revenues sufficient for the
10 payment of the principal and interest on such bonds or warrants and all
11 payments which the operating agency is obligated to set aside in any
12 special fund or funds created for such purposes, and for the proper
13 operation and maintenance of the public utility owned by the operating
14 agency and all necessary repairs, replacements and renewals thereof.

15 (7) To act as agent for the purchase and sale at wholesale of
16 electricity for any city or district whenever requested so to do by
17 such city or district.

18 (8) To contract for and to construct, operate and maintain
19 fishways, fish protective devices and facilities and hatcheries as
20 necessary to preserve or compensate for projects operated by the
21 operating agency.

22 (9) To construct, operate and maintain channels, locks, canals and
23 other navigational, reclamation, flood control and fisheries facilities
24 as may be necessary or incidental to the construction of any electric
25 generating project, and to enter into agreements and contracts with any
26 person, firm or corporation, including political subdivisions of any
27 state, of Canada or the United States for such construction, operation
28 and maintenance, and for the distribution and payment of the costs
29 thereof.

30 (10) To employ legal, engineering and other professional services
31 and fix the compensation of a managing director and such other
32 employees as the operating agency may deem necessary to carry on its
33 business, and to delegate to such manager or other employees such
34 authority as the operating agency shall determine. Such manager and
35 employees shall be appointed for an indefinite time and be removable at
36 the will of the operating agency.

37 (11) To study, analyze and make reports concerning the development,
38 utilization and integration of electric generating facilities and

1 requirements within the state and without the state in that region
2 which affects the electric resources of the state.

3 (12) To acquire any land bearing coal, uranium, geothermal, or
4 other energy resources, within or without the state, or any rights
5 therein, for the purpose of assuring a long-term, adequate supply of
6 coal, uranium, geothermal, or other energy resources to supply its
7 needs, both actual and prospective, for the generation of power and may
8 make such contracts with respect to the extraction, sale, or disposal
9 of such energy resources that it deems proper.

10 **Sec. 3.** RCW 43.52.3411 and 1987 c 376 s 10 are each amended to
11 read as follows:

12 For the purposes provided for in this chapter, an operating agency
13 shall have power to issue revenue bonds or warrants payable from the
14 revenues of the utility properties operated by it. Whenever the board
15 of a joint operating agency shall deem it advisable to issue bonds or
16 warrants to engage in conservation activities or to construct except
17 for the generation of electricity by nuclear power, or acquire any
18 public utility or any works, plants or facilities or any additions or
19 betterments thereto or extensions thereof it shall provide therefor by
20 resolution, which shall specify and adopt the system or plan proposed
21 and declare the estimated cost thereof as near as may be. Such cost
22 may include funds for working capital, for payment of expenses incurred
23 in the conservation activities or the acquisition or construction of
24 the utility and for the repayment of advances made to the operating
25 agency by any public utility district or city. Except as otherwise
26 provided in RCW 43.52.343, all the provisions of law as now or
27 hereafter in effect relating to revenue bonds or warrants of public
28 utility districts shall apply to revenue bonds or warrants issued by
29 the joint operating agency including, without limitation, provisions
30 relating to: The creation of special funds and the pledging of
31 revenues thereto; the time and place of payment of such bonds or
32 warrants and the interest rate or rates thereon; the covenants that may
33 be contained therein and the effect thereof; the execution, issuance,
34 sale, funding, or refunding, redemption and registration of such bonds
35 or warrants; and the status thereof as negotiable instruments, as legal
36 securities for deposits of public moneys and as legal investments for
37 trustees and other fiduciaries and for savings and loan associations,
38 banks and insurance companies doing business in this state. However,

1 for revenue bonds or warrants issued by an operating agency, the
2 provisions under RCW 54.24.030 relating to additional or alternate
3 methods for payment may be made a part of the contract with the owners
4 of any revenue bonds or warrants of an operating agency. The board may
5 authorize the managing director or the treasurer of the operating
6 agency to sell revenue bonds or warrants maturing one year or less from
7 the date of issuance, and to fix the interest rate or rates on such
8 revenue bonds or warrants with such restrictions as the board shall
9 prescribe. Such bonds and warrants may be in any form, including
10 bearer bonds or bearer warrants, or registered bonds or registered
11 warrants as provided in RCW 39.46.030. Such bonds and warrants may
12 also be issued and sold in accordance with chapter 39.46 RCW.

13 **Sec. 4.** RCW 43.52.360 and 1987 c 376 s 11 are each amended to read
14 as follows:

15 Any two or more cities or public utility districts or combinations
16 thereof may form an operating agency (herein sometimes called a joint
17 operating agency) for the purpose of acquiring, constructing except for
18 the generation of electricity by nuclear power, operating and owning
19 plants, systems and other facilities and extensions thereof, for the
20 generation and/or transmission of electric energy and power. Each such
21 agency shall be a municipal corporation of the state of Washington with
22 the right to sue and be sued in its own name.

23 Application for the formation of an operating agency shall be made
24 to the director of the department of ecology (herein sometimes referred
25 to as the director) after the adoption of a resolution by the
26 legislative body of each city or public utility district to be initial
27 members thereof authorizing said city or district to participate. Such
28 application shall set forth (1) the name and address of each
29 participant, together with a certified copy of the resolution
30 authorizing its participation; (2) a general description of the project
31 and the principal project works, including dams, reservoirs, power
32 houses and transmission lines; (3) the general location of the project
33 and, if a hydroelectric project, the name of the stream on which such
34 proposed project is to be located; (4) if the project is for the
35 generation of electricity, the proposed use or market for the power to
36 be developed; (5) a general statement of the electric loads and
37 resources of each of the participants; (6) a statement of the proposed

1 method of financing the preliminary engineering and other studies and
2 the participation therein by each of the participants.

3 Within ten days after such application is filed with the director
4 of the department of ecology notice thereof shall be published by the
5 director once a week for four consecutive weeks in a newspaper of
6 general circulation in the county or counties in which such project is
7 to be located, setting forth the names of the participants and the
8 general nature, extent and location of the project. Any public utility
9 wishing to do so may object to such application by filing an objection,
10 setting forth the reasons therefor, with the director of the department
11 of ecology not later than ten days after the date of last publication
12 of such notice.

13 Within ninety days after the date of last publication the director
14 shall either make findings thereon or have instituted a hearing
15 thereon. In (~~{the}~~) the event the director has neither made findings
16 nor instituted a hearing within ninety days of the date of last
17 publication, or if such hearing is instituted within such time but no
18 findings are made within one hundred and twenty days of the date of
19 such last publication, the application shall be deemed to have been
20 approved and the operating agency established. If it shall appear (a)
21 that the statements set forth in said application are substantially
22 correct; (b) that the contemplated project is such as is adaptable to
23 the needs, both actual and prospective, of the participants and such
24 other public utilities as indicate a good faith intention by contract
25 or by letter of intent to participate in the use of such project; (c)
26 that no objection to the formation of such operating agency has been
27 filed by any other public utility which prior to and at the time of the
28 filing of the application for such operating agency had on file a
29 permit or license from an agency of the state or an agency of the
30 United States, whichever has primary jurisdiction, for the construction
31 of such project; (d) that adequate provision will be made for financing
32 the preliminary engineering, legal and other costs necessary thereto;
33 the director shall make findings to that effect and enter an order
34 creating such operating agency, establishing the name thereof and the
35 specific project for the construction and operation for which such
36 operating agency is formed. Such order shall not be construed to
37 constitute a bar to any other public utility proceeding according to
38 law to procure any required governmental permits, licenses or
39 authority, but such order shall establish the competency of the

1 operating agency to proceed according to law to procure such permits,
2 licenses or authority.

3 No operating agency shall undertake projects or conservation
4 activities in addition to those for which it was formed without the
5 approval of the legislative bodies of a majority of the members
6 thereof. Prior to undertaking any new project for acquisition of an
7 energy resource, a joint operating agency shall prepare a plan which
8 details a least-cost approach for investment in energy resources. The
9 plan shall include an analysis of the costs of developing conservation
10 compared with costs of developing other energy resources and a strategy
11 for implementation of the plan. The plan shall be updated annually and
12 presented to the energy and utilities committees of the senate and
13 house of representatives for their review and comment. In the event
14 that an operating agency desires to undertake such a hydroelectric
15 project at a site or sites upon which any publicly or privately owned
16 public utility has a license or permit or has a prior application for
17 a license or permit pending with any commission or agency, state or
18 federal, having jurisdiction thereof, application to construct such
19 additional project shall be made to the director of the department of
20 ecology in the same manner, subject to the same requirements and with
21 the same notice as required for an initial agency and project and shall
22 not be constructed until an order authorizing the same shall have been
23 made by the director in the manner provided for such original
24 application.

25 Any party who has joined in filing the application for, or
26 objections against, the creation of such operating agency and/or the
27 construction of an additional project, and who feels aggrieved by any
28 order or finding of the director shall have the right to appeal to the
29 superior court in the manner set forth in RCW 43.52.430.

30 After the formation of an operating agency, any other city or
31 district may become a member thereof upon application to such agency
32 after the adoption of a resolution of its legislative body authorizing
33 said city or district to participate, and with the consent of the
34 operating agency by the affirmative vote of the majority of its
35 members. Any member may withdraw from an operating agency, and
36 thereupon such member shall forfeit any and all rights or interest
37 which it may have in such operating agency or in any of the assets
38 thereof: PROVIDED, That all contractual obligations incurred while a
39 member shall remain in full force and effect. An operating agency may

1 be dissolved by the unanimous agreement of the members, and the
2 members, after making provisions for the payment of all debts and
3 obligations, shall thereupon hold the assets thereof as tenants in
4 common.

5 **Sec. 5.** RCW 43.52.370 and 1983 1st ex.s. c 3 s 2 are each amended
6 to read as follows:

7 (1) Except as provided in subsection (2) of this section, the
8 management and control of an operating agency shall be vested in a
9 board of directors, herein sometimes referred to as the board. The
10 legislative body of each member of an operating agency shall appoint a
11 representative who may, at the discretion of the member and regardless
12 of any charter or other provision to the contrary, be an officer or
13 employee of the member, to serve on the board of the operating agency.
14 Each representative shall have one vote and shall have, in addition
15 thereto, one vote for each block of electric energy equal to ten
16 percent of the total energy generated by the agency during the
17 preceding year purchased by the member represented by such
18 representative. Each member may appoint an alternative representative
19 to serve in the absence or disability of its representative. Each
20 representative shall serve at the pleasure of the member. The board of
21 an operating agency shall elect from its members a president, vice
22 president and secretary, who shall serve at the pleasure of the board.
23 The president and secretary shall perform the same duties with respect
24 to the operating agency as are provided by law for the president and
25 secretary, respectively, of public utility districts, and such other
26 duties as may be provided by motion, rule or resolution of the board.
27 The board of an operating agency shall adopt rules for the conduct of
28 its meetings and the carrying out of its business, and adopt an
29 official seal. All proceedings of an operating agency shall be by
30 motion or resolution and shall be recorded in the minute book which
31 shall be a public record. A majority of the board members shall
32 constitute a quorum for the transaction of business. A majority of the
33 votes which the members present are entitled to cast shall be necessary
34 and sufficient to pass any motion or resolution: PROVIDED, That such
35 board members are entitled to cast a majority of the votes of all
36 members of the board. The members of the board of an operating agency
37 may be compensated by such agency as is provided in RCW 43.52.290:
38 PROVIDED, That the compensation to any member shall not exceed five

1 thousand dollars in any year except for board members who are elected
2 to serve on an executive board established under RCW 43.52.374.

3 (2) If an operating agency is (~~constructing~~) operating,
4 terminating, or decommissioning a nuclear power plant under a site
5 certification agreement under chapter 80.50 RCW, the powers and duties
6 of the board of directors shall include and are limited to the
7 following:

8 (a) Final authority on any decision of the operating agency to
9 purchase, acquire, (~~construct~~) terminate, or decommission any power
10 plants, works, and facilities except that once the board of directors
11 has made a final decision regarding a nuclear power plant, the
12 executive board established under RCW 43.52.374 shall have the
13 authority to make all subsequent decisions regarding the plant and any
14 of its components;

15 (b) Election of members to, removal from, and establishment of
16 salaries for the elected members of the executive board under RCW
17 43.52.374(1)(a); and

18 (c) Selection and appointment of three outside directors as
19 provided in RCW 43.52.374(1)(b).

20 All other powers and duties of the operating agency, including
21 without limitation authority for all actions subsequent to final
22 decisions by the board of directors, including but not limited to the
23 authority to sell any power plant, works, and facilities are vested in
24 the executive board established under RCW 43.52.374.

25 **Sec. 6.** RCW 43.52.378 and 1987 c 505 s 84 are each amended to read
26 as follows:

27 The executive board of any operating agency (~~constructing~~)
28 operating, terminating, or decommissioning a nuclear power plant under
29 a site certification agreement issued pursuant to chapter 80.50 RCW
30 shall appoint an administrative auditor. The administrative auditor
31 shall be deemed an officer under chapter 42.23 RCW. The appointment of
32 the administrative auditor shall be in addition to the appointment of
33 the auditor for the issuance of warrants and other purposes as provided
34 in RCW 43.52.375. The executive board shall retain a qualified firm or
35 firms to conduct performance audits which is in fact independent and
36 does not have any interest, direct or indirect, in any contract with
37 the operating agency other than its employment hereunder. No member or
38 employee of any such firm shall be connected with the operating agency

1 as an officer, employee, or contractor. The administrative auditor and
2 the firm or firms shall be independently and directly responsible to
3 the executive board of the operating agency. The executive board shall
4 require a firm to conduct continuing audits of the methods, procedures
5 and organization used by the operating agency to control costs,
6 schedules, productivity, contract amendments, project design and any
7 other topics deemed desirable by the executive board. The executive
8 board may also require a firm to analyze particular technical aspects
9 of the operating agency's projects and contract amendments. The firm
10 or firms shall provide advice to the executive board in its management
11 and control of the operating agency. At least once each year, the firm
12 or firms shall prepare and furnish a report of its actions and
13 recommendations to the executive board for the purpose of enabling it
14 to attain the highest degree of efficiency in the management and
15 control of any thermal power project under construction or in
16 operation. The administrative auditor shall assist the firm or firms
17 in the performance of its duties. The administrative auditor and the
18 firm or firms shall consult regularly with the executive board and
19 furnish any information or data to the executive board which the
20 administrative auditor, firm, or executive board deems helpful in
21 accomplishing the purpose above stated. The administrative auditor
22 shall perform such other duties as the executive board shall prescribe
23 to accomplish the purposes of this section.

24 Upon the concurrent request of the chairmen of the senate or house
25 energy and utilities committees, the operating agency shall report to
26 the committees on a quarterly basis.

27 **Sec. 7.** RCW 43.52.520 and 1981 c 301 s 1 are each amended to read
28 as follows:

29 An operating agency (~~(constructing or)~~) operating a nuclear power
30 plant under a site certificate issued under chapter 80.50 RCW may
31 establish a security force for the protection and security of each
32 nuclear power plant site exclusion area. Members of the security force
33 may be supplied with uniforms and badges indicating their position as
34 security force members if the uniforms and badges do not closely
35 resemble the uniforms or badges of any law enforcement agency or other
36 agency possessing law enforcement powers in the surrounding area of the
37 nuclear power plant exclusion area. Members of the security force
38 shall enroll in and successfully complete a training program approved

1 by the criminal justice training commission which does not conflict
2 with any requirements of the United States nuclear regulatory
3 commission for the training of security personnel at nuclear power
4 plants. All costs incurred by the criminal justice training commission
5 in the preparation, delivery, or certification of the training programs
6 shall be paid by the operating agency.

7 **Sec. 8.** RCW 43.52.612 and 1982 1st ex.s. c 44 s 5 are each amended
8 to read as follows:

9 A joint operating agency shall require that bids upon any
10 (~~construction or~~) improvement of any nuclear generating project and
11 associated facilities shall be made upon the contract bid form supplied
12 by the operating agency, and in no other manner. The operating agency
13 may, before furnishing any person, firm, or corporation desiring to bid
14 upon any work with a contract bid form, require from the person, firm,
15 or corporation, answers to questions contained in a standard form of
16 questionnaire and financial statement, including a complete statement
17 of the financial ability and experience of the person, firm, or
18 corporation in performing work. The questionnaire shall be sworn to
19 before a notary public or other person authorized to take
20 acknowledgement of deeds and shall be submitted once a year or at such
21 other times as the operating agency may require. Whenever the
22 operating agency is not satisfied with the sufficiency of the answers
23 contained in the questionnaire and financial statement or whenever the
24 operating agency determines that the person, firm, or corporation does
25 not meet all of the requirements set forth in this section, it may
26 refuse to furnish the person, firm, or corporation with a contract bid
27 form and any bid of the person, firm, or corporation must be
28 disregarded. The operating agency shall require that a person, firm,
29 or corporation have all of the following requirements in order to
30 obtain a contract form:

31 (1) Adequate financial resources, the ability to secure these
32 resources, or the capability to secure a one hundred percent payment
33 and performance bond;

34 (2) The necessary experience, organization, and technical
35 qualifications to perform the proposed contract;

36 (3) The ability to comply with the required performance schedule
37 taking into consideration all of its existing business commitments;

1 (4) A satisfactory record of performance, integrity, judgment, and
2 skills; and

3 (5) Be otherwise qualified and eligible to receive an award under
4 applicable laws and regulations.

5 The refusal shall be conclusive unless appealed to the superior
6 court of the county where the operating agency is situated or Thurston
7 county within fifteen days, which appeal shall be heard summarily
8 within ten days after the appeal is made and on five days' notice
9 thereof to the operating agency.

10 The prevailing party in such litigation shall be awarded its
11 attorney fees and costs.

12 The operating agency shall not be required to make available for
13 public inspection or copying under chapter 42.17 RCW financial
14 information provided under this section.

15 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.52 RCW
16 to read as follows:

17 As of the effective date of this act, an operating agency is
18 prohibited from commencing or restarting construction or entering into
19 contracts with the purpose of commencing or restarting construction on
20 a facility designed to produce electric energy by means of nuclear
21 power.

--- END ---