

# HOUSE BILL REPORT

## SHB 1854

---

---

**As Passed House:**

March 13, 2003

**Title:** An act relating to joint operating agencies.

**Brief Description:** Allowing cities and public utility districts to purchase energy, including the capability to produce energy, from the agency.

**Sponsors:** By House Committee on Technology, Telecommunications & Energy (originally sponsored by Representatives Crouse, Sullivan, Delvin, Blake, Bush and Grant).

**Brief History:**

**Committee Activity:**

Technology, Telecommunications & Energy: 2/21/03, 3/3/03 [DPS].

**Floor Activity:**

Passed House: 3/13/03, 91-0.

**Brief Summary of Substitute Bill**

· Authorizes cities and public utility districts that are members of a joint operating agency to contract with the agency for electricity from a specific project and for the ability of the project to produce electricity (capability).

---

### HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Morris, Chair; Ruderman, Vice Chair; Sullivan, Vice Chair; Crouse, Ranking Minority Member; Nixon, Assistant Ranking Minority Member; Anderson, Blake, Bush, DeBolt, Delvin, Hudgins, Kirby, McMahan, Romero, Tom, Wallace and Wood.

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

**Background:**

In the 1950s, the Legislature authorized formation of joint operating agencies that allowed cities and public utility districts to join together to develop electricity generation projects. In 1957, 17 public utilities formed the Washington Public Power Supply System. The

first project was the Packwood Lake Hydroelectric Project.

During the 1970s, the joint operating agency began construction of three nuclear facilities, one of which is the Columbia Generating Station at Hanford, the only operating nuclear power plant generating electricity in the state. A joint operating agency is authorized to issue tax exempt revenue bonds to finance its projects. In the case of the first three nuclear power plants, revenue from the Bonneville Power Administration (BPA) was used to guarantee repayment of the revenue bonds through a system of net-billing. An IRS ruling in 1972 changed the tax exempt status of federal agencies and further net-billing agreements were prohibited.

The joint operating agency and others, as part of a regional program of expanding electricity generation, began construction of two additional nuclear facilities. Since the net-billing arrangement with BPA was not available, participants in the project signed participant agreements to finance the operation and construction of plants four and five.

Construction on plants four and five was halted in the early 1980s. In 1983 the Washington Supreme Court (Court) invalidated the 29 participant agreements between the joint operating agency and these publicly-owned utilities. The Court found that these utilities had authority to purchase electricity from the joint operating agency but did not have the authority to contract for the capacity of a facility. Contracting for capacity has the effect of guaranteeing payment of a project that may or may not produce any electricity.

Currently the joint operating agency, known as Energy Northwest, has 17 members (three cities and 14 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.

---

**Summary of Substitute Bill:**

Cities and public utility districts (PUDs) may purchase electric power from a joint operating agency that the city or district requires for its present and future output. Except for natural gas generation projects, the contract to purchase power may include the capability to produce electricity as well as the actual output of the facility. It may also include provisions that require the city or PUD to make payment whether or not the project is completed or operating. The contract may also provide that the contract payments are not subject to reduction and shall not be conditioned on the performance or nonperformance of the operating agency or any city or PUD under the contract.

---

**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:** This bill proposes to fix a problem that arose in the 1980s. A Court decision held that cities and PUD can contract to buy electricity from a joint operating agency but could not accept the risk during construction that the project might not be completed. This is known in the industry as dry hole risk. They can accept risk for a project if they have an ownership interest in it and they can accept the risk for the period after commercial operation begins. It's important to Energy Northwest because projects are financed by issuance of debt secured by a promise to pay by those utilities that purchased the capacity of the project. The dry hole risk issue creates a gap in the ability to obtain financing for that portion of the project. Energy Northwest recently experienced this problem during construction of a wind project. Eight utilities participated. To cover the gap in financing security during construction, insurance had to be purchased. It was difficult to obtain and was very costly. It added 4 percent to the cost of the project and 6 percent to the long term financing of the project. There is a need for additional generation. Other renewable projects are being considered. A better way is needed to cover the risk for the period of construction that is more readily available and less costly.

**Testimony Against:** None.

**Testified:** Representative Crouse, prime sponsor; and Albert Mouncer and Jim Rowland, Energy Northwest.