

**SHB 2639** - S COMM AMD

By Committee on Water, Energy & Telecommunications

ADOPTED 03/06/2008

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that it is in the  
4 public interest for public utility districts to develop renewable  
5 energy projects to meet requirements enacted by the people in  
6 Initiative Measure No. 937 and goals of diversifying energy resource  
7 portfolios. By developing more efficient and cost-effective renewable  
8 energy projects, public utility districts will keep power costs as low  
9 as possible for their customers. Consolidating and clarifying  
10 statutory provisions governing various aspects of public utility  
11 district renewable energy project development will reduce planning time  
12 and expense to meet these objectives.

13 **Sec. 2.** RCW 39.34.030 and 2004 c 190 s 1 are each amended to read  
14 as follows:

15 (1) Any power or powers, privileges or authority exercised or  
16 capable of exercise by a public agency of this state may be exercised  
17 and enjoyed jointly with any other public agency of this state having  
18 the power or powers, privilege or authority, and jointly with any  
19 public agency of any other state or of the United States to the extent  
20 that laws of such other state or of the United States permit such joint  
21 exercise or enjoyment. Any agency of the state government when acting  
22 jointly with any public agency may exercise and enjoy all of the  
23 powers, privileges and authority conferred by this chapter upon a  
24 public agency.

25 (2) Any two or more public agencies may enter into agreements with  
26 one another for joint or cooperative action pursuant to the provisions  
27 of this chapter(~~(+—PROVIDED)~~), except that any such joint or  
28 cooperative action by public agencies which are educational service  
29 districts and/or school districts shall comply with the provisions of

1 RCW 28A.320.080. Appropriate action by ordinance, resolution or  
2 otherwise pursuant to law of the governing bodies of the participating  
3 public agencies shall be necessary before any such agreement may enter  
4 into force.

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

6 (a) Its duration;

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

19 (c) Its purpose or purposes;

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

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

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 contain, in addition to ~~((items))~~ provisions specified  
30 in subsection (3)(a), (c), (d), (e), and (f) ~~((enumerated in~~  
31 ~~subdivision (3) hereof))~~ of this section, ~~((contain))~~ the following:

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

36 (b) The manner of acquiring, holding and disposing of real and  
37 personal property used in the joint or cooperative undertaking. Any

1 joint board is authorized to establish a special fund with a state,  
2 county, city, or district treasurer servicing an involved public agency  
3 designated "Operating fund of . . . . . joint board".

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

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

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

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

24 **Sec. 3.** RCW 54.44.020 and 1997 c 230 s 2 are each amended to read  
25 as follows:

26 (1) Except as provided in subsections (2) and (3) of this section,  
27 cities of the first class, public utility districts organized under  
28 chapter 54.08 RCW, and joint operating agencies organized under chapter  
29 43.52 RCW, any such cities and public utility districts which operate  
30 electric generating facilities or distribution systems and any joint  
31 operating agency shall have power and authority to participate and  
32 enter into agreements with each other and with electrical companies  
33 which are subject to the jurisdiction of the Washington utilities and  
34 transportation commission or the public utility commissioner of Oregon,  
35 hereinafter called "regulated utilities", and with rural electric  
36 cooperatives, including generation and transmission cooperatives for  
37 the undivided ownership of any type of electric generating plants and

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

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

32 (3)(a) Except as provided in subsections (1) and (2) of this  
33 section, cities of the first class, public utility districts organized  
34 under chapter 54.08 RCW, any cities that operate electric generating  
35 facilities or distribution systems, any joint operating agency  
36 organized under chapter 43.52 RCW, or any separate legal entity  
37 comprising two or more thereof organized under chapter 39.34 RCW shall,  
38 either directly or as co-owners of a separate legal entity, have power

1 and authority to participate and enter into agreements described in (b)  
2 and (c) of this subsection with each other, and with any of the  
3 following, either directly or as co-owners of a separate legal entity:

4 (i) Any public agency, as that term is defined in RCW 39.34.020;

5 (ii) Electrical companies that are subject to the jurisdiction of  
6 the Washington utilities and transportation commission or the  
7 regulatory commission of any state; and

8 (iii) Rural electric cooperatives and generation and transmission  
9 cooperatives or any wholly owned subsidiaries of either rural electric  
10 cooperatives or generation and transmission cooperatives.

11 (b) Agreements may provide for:

12 (i) The undivided ownership, or indirect ownership in the case of  
13 a separate legal entity, of common facilities that include any type of  
14 electric generating plant powered by an eligible renewable resource, as  
15 defined in RCW 19.285.030, and transmission facilities including, but  
16 not limited to, related transmission facilities, and for the planning,  
17 financing, acquisition, construction, operation, and maintenance  
18 thereof; and

19 (ii) The formation, operation, and ownership of a separate legal  
20 entity that may own the common facilities.

21 (c) Agreements must provide that each city, public utility  
22 district, or joint operating agency:

23 (i) Owns a percentage of any common facility or a percentage of any  
24 separate legal entity equal to the percentage of the money furnished or  
25 the value of property supplied by it for the acquisition and  
26 construction thereof; and

27 (ii) Owns and controls, or has a right to own and control in the  
28 case of a separate legal entity, a like percentage of the electrical  
29 output thereof.

30 (d) Any entity in which a public utility district participates,  
31 either directly or as co-owner of a separate legal entity, in  
32 constructing or developing a common facility pursuant to this  
33 subsection shall comply with the provisions of chapter 39.12 RCW.

34 (4) Each participant shall defray its own interest and other  
35 payments required to be made or deposited in connection with any  
36 financing undertaken by it to pay its percentage of the money furnished  
37 or value of property supplied by it for the planning, acquisition and  
38 construction of any common facility, or any additions or betterments

1 thereto. The agreement shall provide a uniform method of determining  
2 and allocating operation and maintenance expenses of the common  
3 facility.

4 ~~((4))~~ (5) Each city, public utility district, joint operating  
5 agency, regulated utility, and cooperatives participating in the direct  
6 or indirect ownership or operation of a common facility described in  
7 subsections (1) through (3) of this section shall pay all taxes  
8 chargeable to its share of the common facility and the electric energy  
9 generated thereby under applicable statutes as now or hereafter in  
10 effect, and may make payments during preliminary work and construction  
11 for any increased financial burden suffered by any county or other  
12 existing taxing district in the county in which the common facility is  
13 located, pursuant to agreement with such county or taxing district.

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

16 ~~((As used in this chapter, unless the context otherwise requires:))~~  
17 The definitions in this section apply throughout this chapter unless  
18 the context clearly requires otherwise.

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

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

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

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

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

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

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

8 (6) "Limited liability company interest" means a member's share of  
9 the profits and losses of a limited liability company and a member's  
10 right to receive distributions of the limited liability company's  
11 assets.

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

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

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

24 (10) "Professional limited liability company" means a limited  
25 liability company which is organized for the purpose of rendering  
26 professional service and whose certificate of formation sets forth that  
27 it is a professional limited liability company subject to RCW  
28 25.15.045.

29 (11) "Professional service" means the same as defined under RCW  
30 18.100.030.

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

34 **Sec. 5.** RCW 54.16.180 and 1999 c 69 s 1 are each amended to read  
35 as follows:

36 (1) A district may sell and convey, lease, or otherwise dispose of  
37 all or any part of its works, plants, systems, utilities and

1 properties, after proceedings and approval by the voters of the  
2 district, as provided for the lease or disposition of like properties  
3 and facilities owned by cities and towns(~~(:—PROVIDED, That)~~). The  
4 affirmative vote of three-fifths of the voters voting at an election on  
5 the question of approval of a proposed sale, shall be necessary to  
6 authorize such a sale(~~(:—PROVIDED FURTHER, That)~~).

7 (2) A district may, without the approval of the voters, sell,  
8 convey, lease, or otherwise dispose of all or any part of the property  
9 owned by it(~~(7)~~) that is located:

10 (a) Outside its boundaries, to another public utility district,  
11 city, town or other municipal corporation (~~((without the approval of the~~  
12 ~~voters)); or ((may sell, convey, lease, or otherwise dispose of to any~~  
13 ~~person or public body, any part, either))~~

14 (b) Within or without its boundaries, which has become  
15 unserviceable, inadequate, obsolete, worn out or unfit to be used in  
16 the operations of the system and which is no longer necessary, material  
17 to, and useful in such operations, (~~((without the approval of the~~  
18 ~~voters:—PROVIDED FURTHER, That))~~) to any person or public body.

19 (3) A district may sell, convey, lease or otherwise dispose of  
20 items of equipment or materials to any other district, to any  
21 cooperative, mutual, consumer-owned or investor-owned utility, to any  
22 federal, state, or local government agency, to any contractor employed  
23 by the district or any other district, utility, or agency, or any  
24 customer of the district or of any other district or utility, from the  
25 district's stores without voter approval or resolution of the  
26 district's board, if such items of equipment or materials cannot  
27 practicably be obtained on a timely basis from any other source, and  
28 the amount received by the district in consideration for any such sale,  
29 conveyance, lease, or other disposal of such items of equipment or  
30 materials is not less than the district's cost to purchase such items  
31 or the reasonable market value of equipment or materials(~~(:—PROVIDED~~  
32 ~~FURTHER, That a public utility)~~).

33 (4) A district located within a county with a population of from  
34 one hundred twenty-five thousand to less than two hundred ten thousand  
35 may sell and convey to a city of the first class, which owns its own  
36 water system, all or any part of a water system owned by (~~(said public~~  
37 ~~utility)~~) the district where a portion of it is located within the



1 boundaries of (~~such~~) the city, without approval of the voters, upon  
2 such terms and conditions as the district shall determine(~~(:—PROVIDED~~  
3 ~~FURTHER, That)~~).

4 (5) A (~~public utility~~) district located in a county with a  
5 population of from twelve thousand to less than eighteen thousand and  
6 bordered by the Columbia river may, separately or in connection with  
7 the operation of a water system, or as part of a plan for acquiring or  
8 constructing and operating a water system, or in connection with the  
9 creation of another or subsidiary local utility district, (~~may~~)  
10 provide for the acquisition or construction, additions or improvements  
11 to, or extensions of, and operation of, a sewage system within the same  
12 service area as in the judgment of the district commission is necessary  
13 or advisable (~~in order~~) to eliminate or avoid any existing or  
14 potential danger to (~~the~~) public health (~~by reason of the~~) due to  
15 lack of sewerage facilities or (~~by reason of the~~) inadequacy of  
16 existing facilities(~~(:— AND PROVIDED FURTHER, That a public utility)~~).

17 (6) A district located within a county with a population of from  
18 one hundred twenty-five thousand to less than two hundred ten thousand  
19 bordering on Puget Sound may sell and convey to any city or town with  
20 a population of less than ten thousand all or any part of a water  
21 system owned by (~~said public utility~~) the district without approval  
22 of the voters upon such terms and conditions as the district shall  
23 determine.

24 (7) A district may sell and convey, lease, or otherwise dispose of,  
25 to any person or entity without approval of the voters and upon such  
26 terms and conditions as it determines, all or any part of an electric  
27 generating project owned directly or indirectly by the district,  
28 regardless of whether the project is completed, operable, or operating,  
29 as long as:

30 (a) The project is or would be powered by an eligible renewable  
31 resource as defined in RCW 19.285.030; and

32 (b) The district, or the separate legal entity in which the  
33 district has an interest in the case of indirect ownership, has:

34 (i) The right to lease the project or to purchase all or any part  
35 of the energy from the project during the period in which it does not  
36 have a direct or indirect ownership interest in the project; and

37 (ii) An option to repurchase the project or part thereof sold,

1 conveyed, leased, or otherwise disposed of at or below fair market  
2 value upon termination of the lease of the project or termination of  
3 the right to purchase energy from the project. ((Public utility))

4 (8) Districts are municipal corporations for the purposes of this  
5 section ~~((and the))~~. A commission shall be held to be the legislative  
6 body ~~((and the))~~, a president and secretary shall have the same powers  
7 and perform the same duties as ~~((the))~~ a mayor and city clerk, and the  
8 district resolutions ~~((of the districts))~~ shall be held to be  
9 ordinances within the meaning of ~~((the))~~ statutes governing the sale,  
10 lease, or other disposal of public utilities owned by cities and towns.

11 **Sec. 6.** RCW 42.24.080 and 1995 c 301 s 72 are each amended to read  
12 as follows:

13 (1) All claims presented against any county, city, district or  
14 other municipal corporation or political subdivision by persons  
15 furnishing materials, rendering services or performing labor, or for  
16 any other contractual purpose, shall be audited, before payment, by an  
17 auditing officer elected or appointed pursuant to statute or, in the  
18 absence of statute, an appropriate charter provision, ordinance or  
19 resolution of the municipal corporation or political subdivision. Such  
20 claims shall be prepared for audit and payment on a form and in the  
21 manner prescribed by the state auditor. The form shall provide for the  
22 authentication and certification by such auditing officer that the  
23 materials have been furnished, the services rendered ~~((or))~~, the labor  
24 performed as described, or that any advance payment is due and payable  
25 pursuant to a contract or is available as an option for full or partial  
26 fulfillment of a contractual obligation, and that the claim is a just,  
27 due and unpaid obligation against the municipal corporation or  
28 political subdivision~~((; and))~~. No claim shall be paid without such  
29 authentication and certification~~((; PROVIDED, That the certificates))~~.

30 (2) Certification as to claims of officers and employees of a  
31 county, city, district or other municipal corporation or political  
32 subdivision, for services rendered, shall be made by the person charged  
33 with ~~((the duty of))~~ preparing and submitting vouchers for ~~((the))~~  
34 payment of services~~((, and))~~. He or she shall certify that the claim  
35 is just, true and unpaid, ~~((which certificate))~~ and that certification  
36 shall be part of the voucher."

**ADOPTED 03/06/2008**

1        On page 1, line 2 of the title, after "agencies;" strike the  
2 remainder of the title and insert "amending RCW 39.34.030, 54.44.020,  
3 25.15.005, 54.16.180, and 42.24.080; and creating a new section."

EFFECT: Adds an intent section finding that it is in the public interest for PUDs to develop renewable energy projects and that consolidating and clarifying provisions concerning these projects will reduce planning time and expense.

Provides that agreements concerning common facilities may provide for formation, operation, and ownership of a separate legal entity that may own the facilities. Provides that a project agreement may include a lease-back provision and an option to repurchase the property at the termination of the lease. A 22-year time limit upon exercising the option to repurchase the property is deleted.

Provides that any entity in which a PUD participates in constructing or developing a renewable energy plant and transmission facilities must comply with prevailing wage requirements.

Makes technical changes to clarify new language and existing law.

--- END ---