

Chapter 43.52 RCW
OPERATING AGENCIES

Sections

- 43.52.250 Definitions.
- 43.52.260 Scope of authority.
- 43.52.272 Power commission abolished.
- 43.52.290 Members of the board of directors of an operating agency
 - Compensation—May hold other public position—
 - Incompatibility of offices doctrine voided.
- 43.52.300 Powers and duties of an operating agency.
- 43.52.3411 Revenue bonds or warrants.
- 43.52.343 Revenue bonds or warrants—Sale by negotiation or advertisement and bid.
- 43.52.350 Operating agencies to provide fishways, facilities and hatcheries—Contracts.
- 43.52.360 Operating agency—Formation—Additional projects—Appeals
 - Membership, withdrawal—Dissolution.
- 43.52.370 Operating agency board of directors—Members, appointment, vote, term, etc.—Rules—Proceedings—Limitation on powers and duties.
- 43.52.374 Operating agency executive board—Members—Terms—Removal
 - Rules—Proceedings—Managing director—Civil immunities—Defense and indemnification.
- 43.52.375 Treasurer—Auditor—Powers and duties—Official bonds—Funds.
- 43.52.378 Executive board—Appointment of administrative auditor—Retention of firm for performance audits—Duties of auditor and firm—Reports.
- 43.52.380 Member's preference to buy energy—Apportionment—Surplus.
- 43.52.383 Compliance with open public meetings act.
- 43.52.385 Best interest of ratepayers to determine interest of agency.
- 43.52.391 Powers and duties of operating agency.
- 43.52.395 Maximum interest rate operating agency may pay member.
- 43.52.410 Authority of city or district to contract for electric energy or falling waters.
- 43.52.430 Appeals from director of department of ecology.
- 43.52.440 Effect of chapter on "Columbia River Sanctuary Act."
- 43.52.450 Chapter requirements are cumulative—Preservation of rights—Not subject to utilities and transportation commission.
- 43.52.460 Operating agency to pay in lieu of taxes.
- 43.52.470 Operating agency—Validity of organization and existence.
- 43.52.515 Application of Titles 9 and 9A RCW.
- 43.52.520 Security force—Authorized.
- 43.52.525 Security force—Criminal history record information.
- 43.52.530 Security force—Powers and duties—Rules on speed, operation, location of vehicles authorized.
- 43.52.535 Security force—Membership in retirement system authorized.
- 43.52.550 Plans for repayment of operating agency obligations maturing prior to planned operation of plant.

- 43.52.560 Contracts for materials or work required—Sealed bids.
- 43.52.565 Contracts for materials or work through competitive negotiation—Nuclear generating projects and associated facilities.
- 43.52.567 Contracts for materials or work through competitive negotiation—Renewable electrical energy generation projects.
- 43.52.570 Purchase of materials by telephone or written quotation authorized—Procedure.
- 43.52.575 Purchase of materials without competition authorized.
- 43.52.580 Emergency purchase of materials or work by contract.
- 43.52.585 Procedures for implementing RCW 43.52.560 through 43.52.580.
- 43.52.590 Construction of RCW 43.52.560 through 43.52.585.
- 43.52.595 Contracts for electric power and energy.
- 43.52.612 Contract bid form.
- 43.52.910 Construction—1965 c 8.

RCW 43.52.250 Definitions. As used in this chapter and unless the context indicates otherwise, words and phrases shall mean:

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

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

"Canada" means Canada or any province thereof.

"Operating agency" or "joint operating agency" means a municipal corporation created pursuant to RCW 43.52.360, as now or hereafter amended.

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

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

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

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

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

"Electrical resources" means both electric energy and conservation.

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

"Conservation" means any reduction in electric power consumption as a result of increases in efficiency of energy use, production, or distribution. [1987 c 376 s 8; 1982 1st ex.s. c 43 s 1; 1981 1st

ex.s. c 1 s 1; 1977 ex.s. c 184 s 1; 1965 c 8 s 43.52.250. Prior: 1953 c 281 s 1.]

Severability—Savings—1982 1st ex.s. c 43: See notes following RCW 43.52.374.

Severability—1981 1st ex.s. c 1: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 1st ex.s. c 1 s 5.]

RCW 43.52.260 Scope of authority. The authority granted in this chapter shall apply equally to the generating of electricity by water power, by steam power, by nuclear power, conservation, or by any other means whatsoever. [1987 c 376 s 9; 1977 ex.s. c 184 s 2; 1965 c 8 s 43.52.260. Prior: 1955 c 258 s 18; 1953 c 281 s 20.]

RCW 43.52.272 Power commission abolished. The Washington state power commission is hereby abolished. [1965 c 8 s 43.52.272. Prior: 1957 c 295 s 8.]

RCW 43.52.290 Members of the board of directors of an operating agency—Compensation—May hold other public position—Incompatibility of offices doctrine voided. Members of the board of directors of an operating agency shall be paid the sum of fifty dollars per day as compensation for each day or major part thereof devoted to the business of the operating agency, together with their traveling and other necessary expenses. Such member may, regardless of any charter or other provision to the contrary, be an officer or employee holding another public position and, if he or she be such other public officer or employee, he or she shall be paid by the operating agency such amount as will, together with the compensation for such other public position equal the sum of fifty dollars per day. The common law doctrine of incompatibility of offices is hereby voided as it applies to persons sitting on the board of directors or the executive board of an operating agency and holding an elective or appointive position on a public utility district commission or municipal legislative authority or being an employee of a public utility district or municipality. [2009 c 549 s 5135; 1983 1st ex.s. c 3 s 1; 1982 1st ex.s. c 43 s 5; 1977 ex.s. c 184 s 3; 1965 c 8 s 43.52.290. Prior: 1953 c 281 s 4.]

Severability—Savings—1982 1st ex.s. c 43: See notes following RCW 43.52.374.

RCW 43.52.300 Powers and duties of an operating agency. An operating agency formed under RCW 43.52.360 shall have authority:

- (1) To generate, produce, transmit, deliver, exchange, purchase or sell electric energy and to enter into contracts for any or all such purposes.
- (2) To construct, condemn, purchase, lease, acquire, add to, extend, maintain, improve, operate, develop and regulate plants, works

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

(3) To negotiate and enter into contracts with the United States or any of its agencies, with any state or its agencies, with Canada or its agencies or with any district or city of this state, for the lease, purchase, construction, extension, betterment, acquisition, operation and maintenance of all or any part of any electric generating and transmission plants and reservoirs, works and facilities or rights necessary thereto, either within or without the state of Washington, and for the marketing of the energy produced therefrom. Such negotiations or contracts shall be carried on and concluded with due regard to the position and laws of the United States in respect to international agreements.

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

(5) To apply to the appropriate agencies of the state of Washington, the United States or any thereof, and to Canada and/or to any other proper agency for such permits, licenses or approvals as may be necessary, and to construct, maintain and operate works, plants and facilities in accordance with such licenses or permits, and to obtain, hold and use such licenses and permits in the same manner as any other person or operating unit.

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

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

(8) To contract for and to construct, operate and maintain fishways, fish protective devices and facilities and hatcheries as

necessary to preserve or compensate for projects operated by the operating agency.

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

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

(11) To study, analyze and make reports concerning the development, utilization and integration of electric generating facilities and requirements within the state and without the state in that region which affects the electric resources of the state.

(12) To acquire any land bearing coal, uranium, geothermal, or other energy resources, within or without the state, or any rights therein, for the purpose of assuring a long-term, adequate supply of coal, uranium, geothermal, or other energy resources to supply its needs, both actual and prospective, for the generation of power and may make such contracts with respect to the extraction, sale, or disposal of such energy resources that it deems proper. [1977 ex.s. c 184 s 4; 1975 1st ex.s. c 37 s 1; 1965 c 8 s 43.52.300. Prior: 1955 c 258 s 1; 1953 c 281 s 5.]

***Reviser's note:** The comma following "of any state" appears to have been inadvertently omitted from 1975 1st ex.s. c 37 s 1 and from subsequent publications of this section. The comma has been restored by the code reviser, beginning with the 2018 publication of this section.

RCW 43.52.3411 Revenue bonds or warrants. For the purposes provided for in this chapter, an operating agency shall have power to issue revenue bonds or warrants payable from the revenues of the utility properties operated by it. Whenever the board of a joint operating agency shall deem it advisable to issue bonds or warrants to engage in conservation activities or to construct or acquire any public utility or any works, plants or facilities or any additions or betterments thereto or extensions thereof it shall provide therefor by resolution, which shall specify and adopt the system or plan proposed and declare the estimated cost thereof as near as may be. Such cost may include funds for working capital, for payment of expenses incurred in the conservation activities or the acquisition or construction of the utility and for the repayment of advances made to the operating agency by any public utility district or city. Except as otherwise provided in RCW 43.52.343, all the provisions of law as now or hereafter in effect relating to revenue bonds or warrants of public utility districts shall apply to revenue bonds or warrants issued by the joint operating agency including, without limitation, provisions relating to: The creation of special funds and the pledging of

revenues thereto; the time and place of payment of such bonds or warrants and the interest rate or rates thereon; the covenants that may be contained therein and the effect thereof; the execution, issuance, sale, funding, or refunding, redemption and registration of such bonds or warrants; and the status thereof as negotiable instruments, as legal securities for deposits of public moneys and as legal investments for trustees and other fiduciaries and for savings and loan associations, banks and insurance companies doing business in this state. However, for revenue bonds or warrants issued by an operating agency, the provisions under RCW 54.24.030 relating to additional or alternate methods for payment may be made a part of the contract with the owners of any revenue bonds or warrants of an operating agency. The board may authorize the managing director or the treasurer of the operating agency to sell revenue bonds or warrants maturing one year or less from the date of issuance, and to fix the interest rate or rates on such revenue bonds or warrants with such restrictions as the board shall prescribe. Such bonds and warrants may be in any form, including bearer bonds or bearer warrants, or registered bonds or registered warrants as provided in RCW 39.46.030. Such bonds and warrants may also be issued and sold in accordance with chapter 39.46 RCW. [1987 c 376 s 10; 1983 c 167 s 116; 1981 1st ex.s. c 1 s 2; 1965 c 8 s 43.52.3411. Prior: 1957 c 295 s 6.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Severability—1981 1st ex.s. c 1: See note following RCW 43.52.250.

RCW 43.52.343 Revenue bonds or warrants—Sale by negotiation or advertisement and bid. All bonds issued by an operating agency shall be sold and delivered in such manner, at such rate or rates of interest and for such price or prices and at such time or times as the board shall deem in the best interests of the operating agency, whether by negotiation or to the highest and best bidder after such advertising for bids as the board of the operating agency may deem proper: PROVIDED, That the board may reject any and all bids so submitted and thereafter sell such bonds so advertised under such terms and conditions as it may deem most advantageous to its own interests. [1981 1st ex.s. c 1 s 3; 1965 c 8 s 43.52.343. Prior: 1957 c 295 s 7; 1955 c 258 s 10.]

Severability—1981 1st ex.s. c 1: See note following RCW 43.52.250.

RCW 43.52.350 Operating agencies to provide fishways, facilities and hatcheries—Contracts. An operating agency shall, at the time of the construction of any dam or obstruction, construct and shall thereafter maintain and operate such fishways, fish protective facilities and hatcheries as the director of fish and wildlife finds necessary to permit anadromous fish to pass any dam or other obstruction operated by the operating agency or to replace fisheries damaged or destroyed by such dam or obstruction and an operating agency is further authorized to enter into contracts with the

department of fish and wildlife to provide for the construction and/or operation of such fishways, facilities and hatcheries. [1994 c 264 s 24; 1988 c 36 s 18; 1977 ex.s. c 184 s 5; 1965 c 8 s 43.52.350. Prior: 1953 c 281 s 11.]

RCW 43.52.360 Operating agency—Formation—Additional projects—Appeals—Membership, withdrawal—Dissolution. Any two or more cities or public utility districts or combinations thereof may form an operating agency (herein sometimes called a joint operating agency) for the purpose of acquiring, constructing, operating and owning plants, systems and other facilities and extensions thereof, for the generation and/or transmission of electric energy and power. Each such agency shall be a municipal corporation of the state of Washington with the right to sue and be sued in its own name.

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

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

Within ninety days after the date of last publication the director shall either make findings thereon or have instituted a hearing thereon. In the event the director has neither made findings nor instituted a hearing within ninety days of the date of last publication, or if such hearing is instituted within such time but no findings are made within one hundred and twenty days of the date of such last publication, the application shall be deemed to have been approved and the operating agency established. If it shall appear (a) that the statements set forth in said application are substantially correct; (b) that the contemplated project is such as is adaptable to the needs, both actual and prospective, of the participants and such other public utilities as indicate a good faith intention by contract or by letter of intent to participate in the use of such project; (c) that no objection to the formation of such operating agency has been

filed by any other public utility which prior to and at the time of the filing of the application for such operating agency had on file a permit or license from an agency of the state or an agency of the United States, whichever has primary jurisdiction, for the construction of such project; (d) that adequate provision will be made for financing the preliminary engineering, legal and other costs necessary thereto; the director shall make findings to that effect and enter an order creating such operating agency, establishing the name thereof and the specific project for the construction and operation for which such operating agency is formed. Such order shall not be construed to constitute a bar to any other public utility proceeding according to law to procure any required governmental permits, licenses or authority, but such order shall establish the competency of the operating agency to proceed according to law to procure such permits, licenses or authority.

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

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

After the formation of an operating agency, any other city or district may become a member thereof upon application to such agency after the adoption of a resolution of its legislative body authorizing said city or district to participate, and with the consent of the operating agency by the affirmative vote of the majority of its members. Any member may withdraw from an operating agency, and thereupon such member shall forfeit any and all rights or interest which it may have in such operating agency or in any of the assets thereof: PROVIDED, That all contractual obligations incurred while a member shall remain in full force and effect. An operating agency may be dissolved by the unanimous agreement of the members, and the members, after making provisions for the payment of all debts and obligations, shall thereupon hold the assets thereof as tenants in common. [1998 c 245 s 68; 1987 c 376 s 11; 1977 ex.s. c 184 s 6; 1965

c 8 s 43.52.360. Prior: 1957 c 295 s 1; 1955 c 258 s 3; 1953 c 281 s 12.]

Generation of electric energy by steam: RCW 43.21A.610 through 43.21A.642.

RCW 43.52.370 Operating agency board of directors—Members, appointment, vote, term, etc.—Rules—Proceedings—Limitation on powers and duties. (1) Except as provided in subsection (2) of this section, the management and control of an operating agency shall be vested in a board of directors, herein sometimes referred to as the board. The legislative body of each member of an operating agency shall appoint a representative who may, at the discretion of the member and regardless of any charter or other provision to the contrary, be an officer or employee of the member, to serve on the board of the operating agency. Each representative shall have one vote and shall have, in addition thereto, one vote for each block of electric energy equal to ten percent of the total energy generated by the agency during the preceding year purchased by the member represented by such representative. Each member may appoint an alternative representative to serve in the absence or disability of its representative. Each representative shall serve at the pleasure of the member. The board of an operating agency shall elect from its members a president, vice president and secretary, who shall serve at the pleasure of the board. The president and secretary shall perform the same duties with respect to the operating agency as are provided by law for the president and secretary, respectively, of public utility districts, and such other duties as may be provided by motion, rule or resolution of the board. The board of an operating agency shall adopt rules for the conduct of its meetings and the carrying out of its business, and adopt an official seal. All proceedings of an operating agency shall be by motion or resolution and shall be recorded in the minute book which shall be a public record. A majority of the board members shall constitute a quorum for the transaction of business. A majority of the votes which the members present are entitled to cast shall be necessary and sufficient to pass any motion or resolution: PROVIDED, That such board members are entitled to cast a majority of the votes of all members of the board. The members of the board of an operating agency may be compensated by such agency as is provided in RCW 43.52.290: PROVIDED, That the compensation to any member shall not exceed five thousand dollars in any year except for board members who are elected to serve on an executive board established under RCW 43.52.374.

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

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

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

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

All other powers and duties of the operating agency, including without limitation authority for all actions subsequent to final decisions by the board of directors, including but not limited to the authority to sell any power plant, works, and facilities are vested in the executive board established under RCW 43.52.374. [1983 1st ex.s. c 3 s 2; 1982 1st ex.s. c 43 s 2; 1981 1st ex.s. c 3 s 1; 1977 ex.s. c 184 s 7; 1965 c 8 s 43.52.370. Prior: 1957 c 295 s 2; 1953 c 281 s 13.]

Severability—Savings—1982 1st ex.s. c 43: See notes following RCW 43.52.374.

RCW 43.52.374 Operating agency executive board—Members—Terms—Removal—Rules—Proceedings—Managing director—Civil immunities—Defense and indemnification. (1) With the exception of the powers and duties of the board of directors described in RCW 43.52.370(2), the management and control of an operating agency constructing, operating, terminating, or decommissioning a nuclear power plant under a site certification agreement under chapter 80.50 RCW is vested in an executive board established under this subsection and consisting of eleven members.

(a) Five members of the executive board shall be elected to four-year terms by the board of directors from among the members of the board of directors. The board of directors may provide by rule for the composition of the five members of the executive board elected from among the members of the board of directors so as to reflect the member public utility districts' and cities' participation in the joint operating agency's projects. Members elected to the executive board from the board of directors are ineligible for continued membership on the executive board if they cease to be members of the board of directors. The board of directors may also provide by rule for the removal of a member of the executive board, except for the outside directors. Members of the board of directors may be elected to serve successive terms on the executive board. Members elected to the executive board from the board of directors shall receive a salary from the operating agency at a rate set by the board of directors.

(b) Six members of the executive board shall be outside directors. Three shall be selected and appointed by the board of directors, and three shall be selected and appointed by the governor and confirmed by the senate. All outside directors shall:

(i) Serve four-year terms on the executive board. However, of the initial members of the executive board, the board of directors and the governor shall each appoint one outside director to serve a two-year term, one outside director to serve a three-year term, and one outside director to serve a four-year term. Thereafter, all outside directors shall be appointed for four-year terms. All outside directors are eligible for reappointment;

(ii) Receive travel expenses on the same basis as the five members elected from the board of directors. The outside directors

shall also receive a salary from the operating agency as fixed by the governor;

(iii) Not be an officer or employee of, or in any way affiliated with, the Bonneville power administration or any electric utility conducting business in the states of Washington, Oregon, Idaho, or Montana;

(iv) Not be involved in the financial affairs of the operating agency as an underwriter or financial adviser of the operating agency or any of its members or any of the participants in any of the operating agency's plants; and

(v) Be representative of policymakers in business, finance, or science, or have expertise in the construction or management of such facilities as the operating agency is constructing or operating, or have expertise in the termination, disposition, or liquidation of corporate assets.

(c) The governor may remove outside directors from the executive board for incompetency, misconduct, or malfeasance in office in the same manner as state appointive officers under chapter 43.06 RCW. For purposes of this subsection, misconduct shall include, but not be limited to, nonfeasance and misfeasance.

(2) Nothing in this chapter shall be construed to mean that an operating agency is in any manner an agency of the state. Nothing in this chapter alters or destroys the status of an operating agency as a separate municipal corporation or makes the state liable in any way or to any extent for any preexisting or future debt of the operating agency or any present or future claim against the agency.

(3) The eleven members of the executive board shall be selected with the objective of establishing an executive board which has the resources to effectively carry out its responsibilities. All members of the executive board shall conduct their business in a manner which in their judgment is in the interest of all ratepayers affected by the joint operating agency and its projects.

(4) The executive board shall elect from its members a chair, vice chair, and secretary, who shall serve at the pleasure of the executive board. The executive board shall adopt rules for the conduct of its meetings and the carrying out of its business. All proceedings shall be by motion or resolution and shall be recorded in the minute book, which shall be a public record. A majority of the executive board shall constitute a quorum for the transaction of business.

(5) With respect to any operating agency existing on April 20, 1982, to which the provisions of this section are applicable:

(a) The board of directors shall elect five members to the executive board no later than sixty days after April 20, 1982; and

(b) The board of directors and the governor shall select and appoint the initial outside directors and the executive board shall hold its organizational meeting no later than sixty days after April 20, 1982, and the powers and duties prescribed in this chapter shall devolve upon the executive board at that time.

(6) The executive board shall select and employ a managing director of the operating agency and may delegate to the managing director such authority for the management and control of the operating agency as the executive board deems appropriate. The managing director's employment is terminable at the will of the executive board.

(7) Members of the executive board shall be immune from civil liability for mistakes and errors of judgment in the good faith performance of acts within the scope of their official duties

involving the exercise of judgment and discretion. This grant of immunity shall not be construed as modifying the liability of the operating agency.

The operating agency shall undertake the defense of and indemnify each executive board member made a party to any civil proceeding including any threatened, pending, or completed action, suit, or proceeding, whether civil, administrative, or investigative, by reason of the fact he or she is or was a member of the executive board, against judgments, penalties, fines, settlements, and reasonable expenses, actually incurred by him or her in connection with such proceeding if he or she had conducted himself or herself in good faith and reasonably believed his or her conduct to be in the best interest of the operating agency.

In addition members of the executive board who are utility employees shall not be fired, forced to resign, or demoted from their utility jobs for decisions they make while carrying out their duties as members of the executive board involving the exercise of judgment and discretion. [2009 c 549 s 5136; 1983 1st ex.s. c 3 s 3; 1982 1st ex.s. c 43 s 3; 1981 1st ex.s. c 3 s 2.]

Severability—1982 1st ex.s. c 43: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 43 s 11.]

Savings—1982 1st ex.s. c 43: "(1) All personnel and employees of a board of directors or executive board or committee displaced by section 3 of this act shall become personnel and employees of the executive board created in section 3 of this act without any loss of rights, subject to any appropriate action thereafter.

(2) All pending business before a board of directors or executive board or committee which is replaced by the executive board created in section 3 of this act shall be continued and acted upon by the new executive board.

(3) This act shall not be construed to alter:

(a) Any existing rights acquired under laws relating to operating agencies;

(b) The status of any actions, activities, or civil or criminal proceedings of any existing operating agencies;

(c) The status of any collective bargaining agreements, indebtedness, contracts, or other obligations;

(d) Any valid resolutions, covenants, or agreements between an operating agency and members, participants in any electric generating facility, privately owned public utilities, or agencies of the federal government; or

(e) Any rules, resolutions, or orders adopted by a board of directors or executive board or committee until canceled or superseded." [1982 1st ex.s. c 43 s 4.]

RCW 43.52.375 Treasurer—Auditor—Powers and duties—Official bonds—Funds. (1) The board of each joint operating agency shall by resolution appoint a treasurer. The treasurer shall be the chief financial officer of the operating agency, who shall report at least annually to the board a detailed statement of the financial condition of the operating agency and of its financial operations for the

preceding fiscal year. The treasurer shall advise the board on all matters affecting the financial condition of the operating agency. Before entering upon his or her duties the treasurer shall give bond to the operating agency, with a surety company authorized to write such bonds in this state as surety, in an amount which the board finds by resolution will protect the operating agency against loss, conditioned that all funds which he or she receives as such treasurer will be faithfully kept and accounted for and for the faithful discharge of his or her duties. The amount of such bond may be decreased or increased from time to time as the board may by resolution direct.

(2) The board shall also appoint an auditor and may require him or her to give a bond with a surety company authorized to do business in the state of Washington in such amount as it shall by resolution prescribe, conditioned for the faithful discharge of his or her duties. The auditor shall report directly to the board and be responsible to it for discharging his or her duties.

(3) The premiums on the bonds of the auditor and the treasurer shall be paid by the operating agency. The board may provide for coverage of said officers and other persons on the same bond.

(4) All funds of the joint operating agency shall be paid to the treasurer and shall be disbursed by the treasurer only on checks or warrants issued by the auditor upon orders or vouchers approved by the board: PROVIDED, That the board by resolution may authorize the managing director or any other bonded officer or employee as legally permissible to approve or disapprove vouchers presented to defray salaries of employees and other expenses of the operating agency arising in the usual and ordinary course of its business, including expenses incurred by the board of directors, its executive committee, or the executive board in the performance of their duties. All moneys of the operating agency shall be deposited forthwith by the treasurer in such depositories, and with such securities as are designated by rules of the board. The treasurer shall establish a general fund and such special funds as shall be created by the board, into which he or she shall place all money of the joint operating agency as the board by resolution or motion may direct.

(5) The board may adopt a policy for the payment of claims or other obligations of the operating agency, which are payable out of solvent funds, and may elect to pay such obligations by check or warrant. However, if the applicable fund is not solvent at the time payment is ordered, then no check may be issued and payment shall be by warrant. When checks are to be used, the board shall designate the qualified public depository upon which the checks are to be drawn as well as the officers required or authorized to sign the checks. For the purposes of this chapter, "warrant" includes checks where authorized by this subsection. [2009 c 173 s 1; 1982 1st ex.s. c 43 s 7; 1981 1st ex.s. c 3 s 3; 1965 c 8 s 43.52.375. Prior: 1957 c 295 s 4.]

Severability—Savings—1982 1st ex.s. c 43: See notes following RCW 43.52.374.

RCW 43.52.378 Executive board—Appointment of administrative auditor—Retention of firm for performance audits—Duties of auditor and firm—Reports. The executive board of any operating agency

constructing, operating, terminating, or decommissioning a nuclear power plant under a site certification agreement issued pursuant to chapter 80.50 RCW shall appoint an administrative auditor. The administrative auditor shall be deemed an officer under chapter 42.23 RCW. The appointment of the administrative auditor shall be in addition to the appointment of the auditor for the issuance of warrants and other purposes as provided in RCW 43.52.375. The executive board shall retain a qualified firm or firms to conduct performance audits which is in fact independent and does not have any interest, direct or indirect, in any contract with the operating agency other than its employment hereunder. No member or employee of any such firm shall be connected with the operating agency as an officer, employee, or contractor. The administrative auditor and the firm or firms shall be independently and directly responsible to the executive board of the operating agency. The executive board shall require a firm to conduct continuing audits of the methods, procedures and organization used by the operating agency to control costs, schedules, productivity, contract amendments, project design and any other topics deemed desirable by the executive board. The executive board may also require a firm to analyze particular technical aspects of the operating agency's projects and contract amendments. The firm or firms shall provide advice to the executive board in its management and control of the operating agency. At least once each year, the firm or firms shall prepare and furnish a report of its actions and recommendations to the executive board for the purpose of enabling it to attain the highest degree of efficiency in the management and control of any thermal power project under construction or in operation. The administrative auditor shall assist the firm or firms in the performance of its duties. The administrative auditor and the firm or firms shall consult regularly with the executive board and furnish any information or data to the executive board which the administrative auditor, firm, or executive board deems helpful in accomplishing the purpose above stated. The administrative auditor shall perform such other duties as the executive board shall prescribe to accomplish the purposes of this section.

Upon the concurrent request of the chairs of the senate or house energy and utilities committees, the operating agency shall report to the committees on a quarterly basis. [2009 c 549 s 5138; 1987 c 505 s 84; 1986 c 158 s 13; 1982 1st ex.s. c 43 s 8; 1981 1st ex.s. c 3 s 4; 1979 ex.s. c 220 s 1.]

Severability—Savings—1982 1st ex.s. c 43: See notes following RCW 43.52.374.

RCW 43.52.380 Member's preference to buy energy—Apportionment—Surplus. Members shall have a preference right to the purchase of all electric energy generated by an operating agency. As between members, the amount of electric energy to which each shall be entitled shall be computed annually and shall be based on the same percentage as the purchases of such member bore to the total generation of the operating agency for the preceding year. Surplus electric energy, that is energy not contracted for by the members, may be sold to any public utility authorized by law to distribute and sell electric energy. [1965 c 8 s 43.52.380. Prior: 1953 c 281 s 14.]

RCW 43.52.383 Compliance with open public meetings act. (1) The legislature intends that the business and deliberations of joint operating agencies conducted by their boards of directors, executive boards, committees and subcommittees be conducted openly and with opportunity for public input.

(2) The board of directors, executive board, and all committees or subcommittees thereof shall comply with the provisions of chapter 42.30 RCW, in order to assure adequate public input and awareness of decisions. [1983 1st ex.s. c 3 s 4.]

RCW 43.52.385 Best interest of ratepayers to determine interest of agency. For the purposes of this chapter, including but not limited to RCW 43.52.343, the best interests of all ratepayers affected by the joint operating agency and its projects shall determine the interest of the operating agency and its board. [1982 1st ex.s. c 43 s 9.]

Severability—Savings—1982 1st ex.s. c 43: See notes following RCW 43.52.374.

RCW 43.52.391 Powers and duties of operating agency. Except as otherwise provided in this section, a joint operating agency shall have all powers now or hereafter granted public utility districts under the laws of this state. It shall not acquire nor operate any electric distribution properties nor condemn any properties owned by a public utility which are operated for the generation and transmission of electric power and energy or are being developed for such purposes with due diligence under a valid license or permit, nor purchase or acquire any operating hydroelectric generating plant owned by any city or district on June 11, 1953, or which may be acquired by any city or district by condemnation on or after January 1, 1957, nor levy taxes, issue general obligation bonds, or create subdistricts. It may enter into any contracts, leases or other undertakings deemed necessary or proper and acquire by purchase or condemnation any real or personal property used or useful for its corporate purposes. Actions in eminent domain may be instituted in the superior court of any county in which any of the property sought to be condemned is located and the court in any such action shall have jurisdiction to condemn property wherever located within the state; otherwise such actions shall be governed by the same procedure as now or hereafter provided by law for public utility districts. An operating agency may sell steam or water not required by it for the generation of power and may construct or acquire any facilities it deems necessary for that purpose.

An operating agency may make contracts for any term relating to the purchase, sale, interchange or wheeling of power with the government of the United States or any agency thereof and with any municipal corporation or public utility, within or without the state, and may purchase or deliver power anywhere pursuant to any such contract. An operating agency may acquire any coal-bearing lands for the purpose of assuring a long-term, adequate supply of coal to supply its needs, both actual and prospective, for the generation of power and may make such contracts with respect to the extraction, sale or disposal of coal that it deems proper.

Any member of an operating agency may advance or contribute funds to an agency as may be agreed upon by the agency and the member, and the agency shall repay such advances or contributions from proceeds of revenue bonds, from operating revenues or from any other funds of the agency, together with interest not to exceed the maximum specified in RCW 43.52.395(1). The legislative body of any member may authorize and make such advances or contributions to an operating agency to assist in a plan for termination of a project or projects, whether or not such member is a participant in such project or projects. Any member who makes such advances or contributions for terminating a project or projects in which it is not a participant shall not assume any liability for any debts or obligations related to the terminated project or projects on account of such advance or contribution. [1982 c 1 s 1; 1977 ex.s. c 184 s 8; 1965 c 8 s 43.52.391. Prior: 1957 c 295 s 5.]

Severability—1982 c 1: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 1 s 3.]

*Liability to other taxing districts for increased financial burdens:
Chapter 54.36 RCW.*

RCW 43.52.395 Maximum interest rate operating agency may pay member. (1) The maximum rate at which an operating agency shall add interest in repaying a member under RCW 43.52.391 may not exceed the higher of fifteen percent per annum or four percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the preceding calendar month.

(2) The maximum rate specified in subsection (1) of this section is applicable to all advances and contributions made by each member to the agency prior to January 21, 1982, and to all renewals of such advances and contributions. [1989 c 14 s 4; 1982 c 1 s 2.]

Severability—1982 c 1: See note following RCW 43.52.391.

RCW 43.52.410 Authority of city or district to contract for electric energy or falling waters. Any city or district is authorized to enter into contracts or compacts with any operating agency or a publicly or privately owned public utility for the purchase and sale of electric energy or falling waters: PROVIDED, That no city or district may enter into a contract or compact with an operating agency to purchase electric energy, or to purchase or participate in a portion of an electrical generating project, that commits the city or district to pay an amount in excess of an express dollar amount or in excess of an express rate per unit of electrical energy received. [1983 c 308 s 1; 1977 ex.s. c 184 s 9; 1965 c 8 s 43.52.410. Prior: 1953 c 281 s 17.]

RCW 43.52.430 Appeals from director of department of ecology.

Any party in interest deeming itself aggrieved by any order of the director of the department of ecology may appeal to the superior court of Thurston county by serving upon the director and filing with clerk of said court within thirty days after the entry of the order a notice of appeal. The director shall, within ten days after service of the notice of appeal, file with the clerk of the court a return containing a true copy of the order appealed from, together with a transcript of the record of the proceeding before the director, after which the appeal shall be at issue. The appeal shall be heard and decided by the court upon the record before the director and the court may either affirm, set aside, or remand the order appealed from for further proceedings. Appellate review of the superior court's decision may be sought as in other civil cases. [1988 c 202 s 44; 1977 ex.s. c 184 s 10; 1971 c 81 s 113; 1965 c 8 s 43.52.430. Prior: 1953 c 281 s 19.]

Severability—1988 c 202: See note following RCW 2.24.050.

RCW 43.52.440 Effect of chapter on "Columbia River Sanctuary Act." Nothing contained in this chapter shall be construed to amend, modify or repeal in any manner *RCW 77.55.160, commonly known as the "Columbia River Sanctuary Act", and all matter herein contained shall be expressly subject to such act. [2003 c 39 s 26; 1983 1st ex.s. c 46 s 178; 1965 c 8 s 43.52.440. Prior: 1953 c 281 s 23.]

***Reviser's note:** RCW 77.55.160 was recodified as RCW 77.55.191 pursuant to 2005 c 146 s 1001.

RCW 43.52.450 Chapter requirements are cumulative—Preservation of rights—Not subject to utilities and transportation commission. The provisions of this chapter shall be cumulative and shall not impair or supersede the powers or rights of any person, firm or corporation or political subdivision of the state of Washington under any other law. The rights of all persons, firms, corporations and political subdivisions or operating units of any kind under existing contracts, renewals thereof or supplements thereto, with the United States, or any agency thereof, for power, are hereby preserved and such rights shall not be impaired or modified by any of the provisions of this chapter or any of the powers granted by this chapter.

The rates, services and practices of any operating agency in respect to the power generated, transmitted or sold by it shall not be governed by the regulations of the utilities and transportation commission. [1977 ex.s. c 184 s 11; 1965 c 8 s 43.52.450. Prior: 1953 c 281 s 10.]

RCW 43.52.460 Operating agency to pay in lieu of taxes. Any joint operating agency formed under this chapter shall pay in lieu of taxes payments in the same amounts as paid by public utility districts. Such payments shall be distributed in accordance with the provisions applicable to public utility districts. [2005 c 443 s 3; 1971 ex.s. c 75 s 1; 1965 c 8 s 43.52.460. Prior: 1957 c 295 s 10.]

Finding—Intent—Effective date—2005 c 443: See notes following RCW 82.08.0255.

RCW 43.52.470 Operating agency—Validity of organization and existence. Except as provided in RCW 43.52.360, the validity of the organization of any joint operating agency can be questioned only by action instituted within six months from the date that the joint operating agency is created. If the validity of the existence of any joint operating agency is not challenged within that period, by the filing and service of a petition or complaint in the action, the state shall be barred forever from questioning the validity of the joint operating agency by reason of any defect claimed to exist in the organization thereof, and it shall be deemed validly organized for all purposes. Any joint operating agency heretofore (March 26, 1957) attempted to be organized pursuant to chapter 43.52 RCW and which has maintained its existence since the date of such attempted organization, is hereby declared legal and valid and its organization and creation are validated and confirmed. [1965 c 8 s 43.52.470. Prior: 1957 c 295 s 11.]

RCW 43.52.515 Application of Titles 9 and 9A RCW. All of the provisions of Titles 9 and 9A RCW apply to actions of a joint operating agency. [1981 c 173 s 6.]

Severability—1981 c 173: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 173 s 9.]

RCW 43.52.520 Security force—Authorized. An operating agency constructing or operating a nuclear power plant under a site certificate issued under chapter 80.50 RCW may establish a security force for the protection and security of each nuclear power plant site exclusion area. Members of the security force may be supplied with uniforms and badges indicating their position as security force members if the uniforms and badges do not closely resemble the uniforms or badges of any law enforcement agency or other agency possessing law enforcement powers in the surrounding area of the nuclear power plant exclusion area. Members of the security force shall enroll in and successfully complete a training program approved by the criminal justice training commission which does not conflict with any requirements of the United States nuclear regulatory commission for the training of security personnel at nuclear power plants. All costs incurred by the criminal justice training commission in the preparation, delivery, or certification of the training programs shall be paid by the operating agency. [1981 c 301 s 1.]

RCW 43.52.525 Security force—Criminal history record information. An operating agency is authorized to obtain criminal history record information pursuant to RCW 10.97.050 for any member of an operating agency security force and for any applicant seeking employment as a member of an operating agency security force. [1981 c 301 s 2.]

RCW 43.52.530 Security force—Powers and duties—Rules on speed, operation, location of vehicles authorized. (1) Members of an operating agency security force authorized under RCW 43.52.520 may use reasonable force to detain, search, or remove persons who enter or remain without permission within the nuclear power plant site exclusion area or whenever, upon probable cause, it appears to a member of the security force that a person has committed or is attempting to commit a crime. Should any person be detained, the security force shall immediately notify the law enforcement agency, having jurisdiction over the nuclear power plant site, of the detainment. The security force is authorized to detain the person for a reasonable time until custody can be transferred to a law enforcement officer. Members of a security force may use that force necessary in the protection of persons and properties located within the confines of the nuclear power plant site exclusion area.

(2) An operating agency may adopt and enforce rules controlling the speed, operation, and location of vehicles on property owned or occupied by the operating agency. Such rules shall be conspicuously posted and persons violating the rules may be expelled or detained.

(3) The rights granted in subsection (1) of this section are in addition to any others that may exist by law including, but not limited to, the rights granted in RCW 9A.16.020(4). [1981 c 301 s 3.]

RCW 43.52.535 Security force—Membership in retirement system authorized. Members of the operating agency security force shall be members of the retirement system under chapter 41.40 RCW. [1981 c 301 s 4.]

RCW 43.52.550 Plans for repayment of operating agency obligations maturing prior to planned operation of plant. Any municipal corporation, cooperative or mutual which has entered into a contract with an operating agency to participate in the construction or acquisition of an energy plant as defined in chapter 80.50 RCW shall annually adopt a plan for the repayment of its contractual share of any operating agency obligation which matures prior to the planned operation of the plant. The manner of adoption of the plan shall be subject to the laws regarding approval of rates of the municipal corporation, cooperative or mutual.

The plan shall include the effect of the means of repayment on its financial condition, its customers' rates, its other contractual rights and obligations, and any other matter deemed useful by the participant.

Each such participating municipal corporation, cooperative or mutual shall include a statement of the extent of its contractual obligation to any operating agency in an annual financial report. [1981 1st ex.s. c 1 s 4.]

Severability—1981 1st ex.s. c 1: See note following RCW 43.52.250.

RCW 43.52.560 Contracts for materials or work required—Sealed bids. Except as provided otherwise in this chapter, a joint operating agency shall purchase any item or items of materials, equipment, or

supplies, the estimated cost of which is more than fifteen thousand dollars exclusive of sales tax, or order work for construction of generating projects and associated facilities, the estimated cost of which is more than twenty-five thousand dollars exclusive of sales tax, by contract in accordance with RCW 54.04.070 and 54.04.080, which require sealed bids for contracts. [2015 c 73 s 1; 2004 c 189 s 1; 1998 c 245 s 69; 1987 c 376 s 1.]

RCW 43.52.565 Contracts for materials or work through competitive negotiation—Nuclear generating projects and associated facilities. (1) An operating agency may enter into contracts through competitive negotiation under subsection (2) of this section for materials, equipment, supplies, or work to be performed during commercial operation of a nuclear generating project and associated facilities (a) to replace a defaulted contract or a contract terminated in whole or in part, or (b) where consideration of factors in addition to price, such as technical knowledge, experience, management, staff, or schedule, is necessary to achieve economical operation of the project, provided that the managing director or a designee determines in writing and the executive board finds that execution of a contract under this section will accomplish project completion or operation more economically than sealed bids.

(2) The selection of a contractor shall be made in accordance with the following procedures:

(a) Proposals shall be solicited through a request for proposals, which shall state the requirements to be met. Responses shall describe the professional competence of the offeror, the technical merits of the offer, and the price.

(b) The request for proposals shall be given adequate public notice in the same manner as for sealed bids.

(c) As provided in the request for proposals, the operating agency shall specify at a preproposal conference the contract requirements in the request for proposal, which may include but are not limited to: Schedule, managerial, and staffing requirements, productivity and production levels, technical expertise, approved project quality assurance procedures, and time and place for submission of proposals. Any inquiries and responses thereto shall be confirmed in writing and shall be sent to all potential offerors.

(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be open for public inspection after contract award.

(e) As provided in the request for proposals, invitations shall be sent to all responsible offerors who submit proposals to attend discussions for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Any inquiries and responses thereto shall be confirmed in writing and shall be sent to all offerors. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(f) The operating agency shall execute a contract with the responsible offeror whose proposal is determined in writing to be the most advantageous to the operating agency and the state taking into consideration the requirements set forth in the request for proposals. The contract file shall contain the basis on which the successful offeror is selected. The operating agency shall conduct a briefing conference on the selection if requested by an offeror.

(g) The contract may be fixed price or cost-reimbursable, in whole or in part, but not cost-plus-percentage-of-cost.

(h) The operating agency shall retain authority and responsibility for inspection, testing, and compliance with applicable regulations or standards of any state or federal governmental agency. [1998 c 245 s 70; 1994 c 27 s 1; 1987 c 376 s 2.]

RCW 43.52.567 Contracts for materials or work through competitive negotiation—Renewable electrical energy generation projects. (1) A joint operating agency with an executive board formed under RCW 43.52.374 may enter into contracts through competitive negotiation under subsection (3) of this section for materials, equipment, supplies, or work to be performed in support of siting, constructing, developing, or deploying a renewable electrical energy generation project, if the managing director or a designee determines in writing and the executive board finds that execution of a contract under this section will accomplish project completion or operation more economically than sealed bids.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Professional competence" means the totality of demonstrated experience, knowledge, skills, proficiency, and abilities required to successfully perform the contract.

(b) "Qualified hydropower" means the energy produced either: (i) As a result of modernizations or upgrades made after June 1, 1998, to hydropower facilities operating on May 8, 2001, that have been demonstrated to reduce the mortality of anadromous fish; or (ii) by run of the river or run of the canal hydropower facilities that are not responsible for obstructing the passage of anadromous fish.

(c) "Renewable electrical energy generation project" means electrical generation facilities that are fueled by: (i) Wind; (ii) solar energy; (iii) geothermal energy; (iv) landfill gas; (v) wave or tidal action; (vi) gas produced during the treatment of wastewater; (vii) qualified hydropower; or (viii) biomass energy based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(d) "Responsible offerors" means offerors who possess necessary management and financial resources, experience, organization, and the ability, capacity, and skill to successfully perform the contract.

(3) The selection of a contractor shall be made in an open public meeting, as part of a public record, and in accordance with the following procedures:

(a) Proposals shall be solicited through a request for proposals, which shall state the requirements to be met. Responses shall describe the professional competence of the offeror, the technical merits of the offer, and the price.

(b) The request for proposals shall be given adequate public notice in the same manner as for sealed bids.

(c) As provided in the request for proposals, the joint operating agency shall specify at a preproposal conference specific contract requirements, which may include but are not limited to: Schedule, managerial, and staffing requirements, productivity and production levels, technical expertise, approved project quality assurance procedures, and time and place for submission of proposals. Any inquiries and responses thereto shall be confirmed in writing and shall be sent to all potential offerors.

(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be open for public inspection after contract award.

(e) As provided in the request for proposals, invitations shall be sent to all responsible offerors who submit proposals to attend discussions for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Any inquiries and responses thereto shall be confirmed in writing and shall be sent to all offerors. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(f) The joint operating agency shall execute a contract with the responsible offeror whose proposal is determined in writing to be the most advantageous to the joint operating agency and the state taking into consideration the requirements set forth in the request for proposals. The contract file shall contain the basis on which the successful offeror is selected. The joint operating agency shall conduct a briefing conference on the selection if requested by an offeror.

(g) The contract may be fixed price or cost-reimbursable, in whole or in part, but not cost-plus-percentage-of-cost.

(h) The joint operating agency shall retain authority and responsibility for inspection, testing, and compliance with applicable regulations or standards of any state or federal governmental agency.
[2006 c 176 s 1.]

RCW 43.52.570 Purchase of materials by telephone or written quotation authorized—Procedure. For the awarding of a contract to purchase any item or items of materials, equipment, or supplies in an amount exceeding five thousand dollars but less than seventy-five thousand dollars, exclusive of sales tax, the managing director or a designee may, in lieu of sealed bids, secure telephone and/or written quotations from at least five vendors, where practical, and award contracts for purchase of materials, equipment, or supplies to the lowest responsible bidder. The agency shall establish a procurement roster, which shall consist of suppliers and manufacturers who may supply materials or equipment to the operating agency, and shall provide for solicitations which will equitably distribute opportunity for bids among suppliers and manufacturers on the roster. Immediately after the award is made, the bid quotations obtained shall be recorded

and shall be posted or otherwise made available for public inspection and copying pursuant to chapter 42.56 RCW at the office of the operating agency or any other officially designated location. Waiver of the deposit or bid bond required for sealed bids may be authorized by the operating agency in securing the bid quotations. [2005 c 274 s 299; 1987 c 376 s 3.]

RCW 43.52.575 Purchase of materials without competition authorized. When the managing director or a designee determines in writing that it is impracticable to secure competition for required materials, equipment, or supplies, he or she may purchase the materials, equipment, or supplies without competition. The term "impracticable to secure competition" means:

- (1) When material, equipment, or supplies can be obtained from only one person or firm (single source of supply); or
- (2) When specially designed parts or components are being procured as replacement parts in support of equipment specially designed by the manufacturer. [1987 c 376 s 4.]

RCW 43.52.580 Emergency purchase of materials or work by contract. When the managing director or a designee determines in writing that an emergency endangers the public safety or threatens property damage or that serious financial injury would result if materials, supplies, equipment, or work are not obtained by a certain time, and they cannot be contracted for by that time by means of sealed bids, the managing director or a designee may purchase materials, equipment, or supplies or may order work by contract in any amount necessary, after having taken precautions to secure a responsive proposal at the lowest price practicable under the circumstances.

For the purposes of this section the term "serious financial injury" means that the costs attributable to the delay caused by contracting by sealed bids exceed the cost of materials, supplies, equipment, or work to be obtained. [1987 c 376 s 5.]

RCW 43.52.585 Procedures for implementing RCW 43.52.560 through 43.52.580. The executive board shall establish procedures for implementing RCW 43.52.560 through 43.52.580 by operating agency resolution after notice, public hearing, and opportunity for public comment. The procedures shall be established within six months after July 26, 1987. [1987 c 376 s 6.]

RCW 43.52.590 Construction of RCW 43.52.560 through 43.52.585. Nothing in RCW 43.52.560 through 43.52.585 requires reapplication by a joint operating agency in existence on July 26, 1987. [1987 c 376 s 7.]

RCW 43.52.595 Contracts for electric power and energy. A city or district may contract to purchase from an operating agency electric power and energy required for its present or future requirements. For projects the output of which is limited to qualified alternative energy resources as defined by RCW 19.29A.090(3), the contract may

include the purchase of capability of the projects to produce electricity in addition to the actual output of the projects. The contract may provide that the city or district must make the payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for. The contract may also provide that payments under the contract are not subject to reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the operating agency or a city or district under the contract or other instrument. [2003 c 138 s 1.]

RCW 43.52.612 Contract bid form. A joint operating agency shall require that bids upon any construction or improvement of any nuclear generating project and associated facilities shall be made upon the contract bid form supplied by the operating agency, and in no other manner. The operating agency may, before furnishing any person, firm, or corporation desiring to bid upon any work with a contract bid form, require from the person, firm, or corporation, answers to questions contained in a standard form of questionnaire and financial statement, including a complete statement of the financial ability and experience of the person, firm, or corporation in performing work. The questionnaire shall be sworn to before a notary public or other person authorized to take acknowledgment of deeds and shall be submitted once a year or at such other times as the operating agency may require. Whenever the operating agency is not satisfied with the sufficiency of the answers contained in the questionnaire and financial statement or whenever the operating agency determines that the person, firm, or corporation does not meet all of the requirements set forth in this section, it may refuse to furnish the person, firm, or corporation with a contract bid form and any bid of the person, firm, or corporation must be disregarded. The operating agency shall require that a person, firm, or corporation have all of the following requirements in order to obtain a contract form:

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

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

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

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

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

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

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

The operating agency shall not be required to make available for public inspection or copying under chapter 42.56 RCW financial

information provided under this section. [2005 c 274 s 300; 1982 1st ex.s. c 44 s 5.]

Severability—1982 1st ex.s. c 44: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 44 s 10.]

RCW 43.52.910 Construction—1965 c 8. This chapter shall be liberally construed to effectuate its purposes. [1965 c 8 s 43.52.910. Prior: 1957 c 295 s 12.]