

CHAPTER 15.

PUBLIC POWER RESOURCES.

[Initiative Measure No. 12 to the Legislature.]

AN ACT pertaining to public power resources and public utilities and acquisition and operation thereof by certain public authorities and municipal corporations; authorizing public utility district commissioners to create joint commissions; relating to composition, government, powers, funds, business and properties thereof; applying certain public utility district laws thereto; empowering them to acquire electrical properties solely by issuing revenue bonds and warrants; requiring deposit of funds with State Treasurer and audit of accounts by State Auditor; taxing their operations instead of property; permitting their union; offsetting earnings against interest on certain condemnation awards; declaring emergency and that act take effect immediately.

Be it enacted by the Legislature of the State of Washington:

Declaration
of intent.

SECTION 1. About two-fifths of the entire potential hydroelectric power in the United States is located within the State of Washington. It is of the most vital importance for the successful prosecution of the war and the development of the resources of this state in the post-war peace that every available kilowatt of this power be harnessed as quickly as possible. This can be properly accomplished only by placing electrical properties under public ownership and operation.

It is contemplated that legislation will be adopted by the Congress relating to the further power development of the Columbia River, and the creation of an administrative agency designed, among other things, to make the energy generated at the several federal dam sites available to public agencies at low cost. It is the intent hereof to provide legal machinery whereby, among other things, the commissioners of the public utility districts may undertake projects complementary to those provided for in such national legislation, may perform their in-

tended functions more economically and efficiently, and accomplish the following general purposes: to form joint public utility district commissions and thereby effect the acquisition of electrical properties upon an economical, systemwide basis; to provide for the financing of such acquisitions solely by revenue bonds and warrants; to provide for the payment of a tax on the gross revenue of any joint commission in lieu of *ad valorem* taxes; and to facilitate the acquisition of local distribution and other properties by public utility districts and other municipal corporations. The rule of strict construction shall have no application to this act, but the same shall be liberally construed in order to carry out the purposes and objects for which the act is intended.

Act shall be liberally construed.

SEC. 2. The majority of the commissioners of each of two or more public utility districts may create a joint public utility district commission, hereinafter called a "joint commission," whenever there is located within such districts more than fifty per centum (50%) in value of the properties comprising an integrated electric system, exclusive of properties not located in any public utility district. Such joint commission shall be a public authority and a body politic and municipal. It shall be formed by filing with the Secretary of State a resolution adopted by the commission of each district stating the name of the joint commission, its principal place of business and the rules governing the transaction of its business. All commissioners for the time being of the public utility districts which shall have adopted and filed such resolution shall be members of the joint commission during their terms of office. The commissioners of any other public utility district in which are located properties of the same integrated electric system shall become members of such joint commission upon equal terms with the original organizers whenever such district shall file

Joint commission, how formed.

Shall be public authority.

Membership.

Others may join.

with the Secretary of State a resolution ratifying the resolution filed by the original organizers and stating that its commissioners shall be members of such joint commission. The successors in office of all commissioners who are members of a joint commission shall succeed to their membership therein.

The term "value," as used in this section and in section 10 of this act, means the latest valuation placed upon the properties therein mentioned by the State Tax Commission for taxing purposes. The term "integrated electric system," as used in this act, means all contiguous or interconnected electric generating, transmission and distribution properties within this state operated by the same public service company.

Definitions.

Officers,
how chosen.

SEC. 3. The members of each joint commission shall meet together and select from among their own number a president and a secretary; they shall also elect an auditor and require him to post a bond for the faithful performance of his duties, to be prescribed by resolution. All books and records of the joint commission shall be subject to audit by the State Auditor as prescribed by law for other municipal corporations.

Subject to
audit.Executive
committec.

SEC. 4. A joint commission may by resolution constitute an executive committee, hereinafter called the committee, which shall be composed of the president and the secretary of the joint commission, together with not less than three nor more than five of its other members, as the joint commission may determine. The committee members shall be elected by the joint commission in the manner and for the time specified in the rules and regulations of the joint commission. Between meetings of the joint commission, the committee shall administer and manage its business, subject to its direction, rules and regulations. The committee shall adopt rules for the transaction of its business, which shall be

How chosen.

Powers and
duties.

Rules.

effective upon filing a copy of the same with and the approval thereof by the joint commission. The committee may buy or sell materials, equipment and supplies pursuant to the rules and regulations of the joint commission, in connection with current operations, but shall not have authority to issue bonds nor to sell or purchase any electric generating, transmission or distribution properties.

SEC. 5. The State Treasurer shall be treasurer *ex officio* of each such joint commission. All monies of the joint commission shall be paid to the treasurer and disbursed by him only on warrants drawn and signed by the auditor upon order of or vouchers approved by the joint commission or by its executive committee. The treasurer shall create and maintain such special funds as the joint commission may direct. All monies so paid to the treasurer shall be deposited by him forthwith as demand deposits in such depository or depositories authorized by law to receive deposits of state funds, and to the credit of such special fund or funds, as the joint commission by resolution may direct. Such deposits shall be made under the same contracts, restrictions, and security, as near as may be, as is provided by statute for state depositories. Any such fund shall be a trust fund and shall at all times be kept segregated and set apart from all other funds; all interest received or earned on money in any such special fund shall be credited thereto and become a part thereof. Whenever it shall appear to a joint commission that it has any inactive fund or funds in excess of current needs, it may by resolution authorize the treasurer to invest any such funds in the bonds of the United States Government, and likewise may authorize him to sell any such bonds at any time. The interest on such bonds, or the proceeds of any sale of the same, shall be credited to

Treasurer
ex officio.

Special
funds.

Restrictions
on deposits.

Trust fund.

May invest.

the fund from which the money for such bonds was withdrawn.

P. U. D. laws govern.

SEC. 6. Except as otherwise provided in this Act, each joint commission and the officers aforesaid shall have the powers, and shall be governed by the provisions set forth in the laws relating to public utility districts (chapter 1, Laws of Washington for 1931, and chapters 182 and 245, Laws of Washington for 1941) as now in effect or hereafter amended; except that they shall not have the power to tax, or to issue any general obligation bonds or warrants, or to create any local improvement assessment district.

No power to tax, bond or assess.

Definitions.

Whenever the words "district," "public utility district," "public utility district commissioners," "commission," or any word or words used in lieu thereof appear anywhere in the above mentioned laws, the same shall be taken to refer to a joint commission for purposes of this act, unless the context indicates otherwise. Whenever the words "within or without the district," or any similar words referring to the boundaries of public utility districts appear in those laws, the same for purposes of this act shall be taken to refer to the limits of all public utility districts whose commissioners are members of the respective joint commission. The joint commission may amend its rules and regulations, in which event it shall file a certified copy of such amendment with the Secretary of State. In the event that any joint commission seeks to acquire by eminent domain any public utility, or any interconnected properties extending through or into more than one county, such proceedings may be instituted and conducted in any one of the counties where such utility or properties or any part thereof are located.

May amend rules.

Situs of action.

Joint commission shall pay tax.

SEC. 7. Any joint commission which owns and operates properties for the generation, transmission or distribution of electric energy shall pay a tax for the act or privilege of engaging in the operation of

such properties within this state, as provided by sections 1 and 2, chapter 245, Laws of Washington for 1941, which tax shall be computed, levied, collected and apportioned as provided therein except that the rate shall be as follows: On energy which the joint commission generates, transmits and distributes to ultimate consumers by means of properties owned by it, the tax shall be five and six-tenths per centum (5.6%) of its gross revenues from such operation; on energy which it generates and transmits by means of properties owned by it and which it sells for purpose of resale, the tax shall be three and six-tenths per centum (3.6%) of its gross revenue from such operation; and on energy which it buys at wholesale and distributes to ultimate consumers by means of properties owned by it, the tax shall be two per centum (2%) of its gross revenue from such operation: *Provided*, That if a joint commission is required to pay taxes to a governmental body located outside of this state on the operations upon which the taxes herein provided for are levied or upon properties used in such operations and located outside of this state, then the amount of taxes so paid without this state shall be deducted from the amount of taxes otherwise payable hereunder: *And provided further*, That the value of energy received by a joint commission from the United States or any other public agency in exchange for energy generated by such joint commission shall not be deemed income of such joint commission for the purposes of this section. The tax provided for herein shall be in lieu of all *ad valorem* real and personal property taxes, but shall be in addition to the tax provided for in chapter 225, Laws of Washington for 1939.

How
computed.

Proviso.

Exchanged
energy
exempt.Tax in lieu
of.

SEC. 8. Any joint commission may by resolution sell, lease or otherwise dispose of any public utility properties or interest therein to the United States,

Property,
how may
sell or lease.

or any public utility district or to any other joint commission, city, town or other municipal corporation or public agency or cooperative, and may contract with any of them respecting the joint or separate acquisition, financing or operation of any public utility property or interest therein. It shall be the duty of a joint commission, when requested to do so by any public utility district in which any electrical distribution properties owned by it are located, to negotiate with such district for the sale of such properties to it, and to sell the same to such district at the fair cash market value thereof as soon as such sale can reasonably be consummated: *Provided, however,* That no such sale shall be made which will impair the security or obligation of any outstanding bonds of the joint commission: *And provided, further,* That the joint commission may include in bonds issued by it such covenants relating to the terms and conditions upon which any public utility or any other properties may be sold, leased or disposed of and the use and disposition of the proceeds thereof, as the joint commission may deem advisable in order to prevent the impairment of the security of such bonds.

SEC. 9. Any public utility district or other municipal corporation may advance or contribute funds to a joint commission for surveys and investigations or for such other work and services relating to the acquisition of properties as may be deemed advisable, and the joint commission may repay such advances and contributions from the proceeds of revenue bonds theretofore or thereafter issued by it or from any other funds belonging to the joint commission.

SEC. 10. No joint commission shall acquire any public utility properties unless more than fifty per cent (50%) in value thereof are located within the public utility districts whose commissioners are

members of such joint commission, or are reasonably necessary for the generation or transmission of energy to supply distribution properties to be acquired and operated within such districts: *Provided*,^{Proviso.} that if a joint commission seeks to acquire an electric system, part of which is located within a county in which no public utility district is located, or within a city of the first class not included within such a district, and the governing body of such county or city adopts a resolution or ordinance declaring it to be in the public interest that the joint commission acquire the portion of the system located therein, then the joint commission may acquire such electric system by purchase or condemnation if more than fifty per cent (50%) in value thereof is located within such county or city and the public utility districts aforesaid. As regards properties located within such city no county resolution shall be required, but a city ordinance shall be requisite and sufficient for the purposes of this section.

SEC. 11. The provisions of section 6, chapter 245, Laws of Washington for 1941, shall apply to any public utility district commissioner while devoting time to the business or attending the meetings of a joint commission of which he is a member. The payments therein provided for may be made either by the joint commission or by the districts whose commissioners are members thereof.^{Remuneration of commissioners.}

SEC. 12. Whenever, in any eminent domain proceeding heretofore or hereafter instituted by any such joint commission, or by any public utility district or other municipal corporation for the acquisition of any public utility or works, plants or facilities, a verdict has been returned, or, if the case is tried before the Court without a jury, a judgment has been entered, fixing the amount to be paid as compensation for the property taken or damaged, such verdict or judgment shall bear interest at the^{Judgments shall bear interest.}

legal rate from the date of entry to the date of payment thereof, and there shall be added thereto the amount, with like interest thereon, expended for reasonable additions and betterments to and extensions of such property made between the dates last mentioned: *Provided*, That there shall be offset against and deducted from such interest and the amount added thereto for additions, betterments and extensions made as aforesaid, the amount of net earnings, before allowance for depreciation, derived from such properties between such dates. The condemnor may serve upon the condemnee or its attorneys of record and file with the court a notice of its intention to pay the award or judgment, together with a demand for a verified statement showing in reasonable detail the income received from the properties, the expense incurred in operating them and the additions, betterments and extensions made thereto, with the cost of the same, between the date of the verdict or judgment and the last day of the month preceding the month in which such statement is rendered. If the condemnee fails to file such sworn statement with the court within ten days after service upon it of the demand therefor, it may be compelled to do so by contempt proceedings. The time during which such contempt proceedings are pending shall not be considered in computing the period within which the condemnor may exercise its right of appropriation. After such sworn statement is filed, the condemnor may pay the full amount of the verdict or judgment plus accrued interest and the amount of such additions, betterments and extensions, less the net earnings before allowance for depreciation, all as shown by the sworn statement, and concurrently obtain a decree of appropriation. Or, if the condemnee fails to file such sworn statement within ten days after service of the notice and demand aforesaid, the condemnor, at its option and

Additions and betterments.

Net earnings offset.

Notice of intention.

Time limit.

Condemnor may pay.

Decree of appropriation.

at any time before the sworn statement is filed, may pay the full amount of the judgment or verdict, plus accrued interest, and concurrently obtain a decree of appropriation. In either case the condemnor shall have the right, and such payment shall not prejudice its right, to institute proceedings for an accounting and payment of the amount due it for net earnings between the date of entry and the date of payment of the condemnation award, provided such accounting proceedings are commenced, either in the eminent domain cause or in an independent action in any court of competent jurisdiction, within thirty days after entry of the decree of appropriation.

May seek accounting.

Time limit.

The condemnor in any such eminent domain proceeding may, pursuant to resolution duly adopted, discontinue such proceeding at any time within one year from the date the right of appeal from the judgment fixing the amount of compensation expires, or, if an appeal is taken from such judgment, then at any time within one year after the final determination of such appeal, upon paying or depositing in court all taxable costs of the condemnees in such proceeding. Except as hereinabove provided, failure of any condemnor to exercise its right of appropriation in any such proceeding within the applicable period aforesaid shall be deemed to constitute an abandonment thereof. If any such proceeding is discontinued or abandoned as aforesaid, no new proceeding shall be instituted therefor until the expiration of one year from the date of such discontinuance or abandonment.

Condemnor may discontinue.

Payment of costs.

Failure to exercise constitutes abandonment.

SEC. 13. In the event that any two or more joint commissions operate properties which are interconnected and of such a nature that they may be operated more efficiently and economically under one management, such joint commissions may unite and organize an authority for that purpose and for purposes related thereto by filing with the Secretary

Joint operations, how organized.

of State a resolution adopted by each such joint commission, stating the name of the proposed authority, its principal place of business, the rules governing the transaction of its business, and the functions to be performed by it. The members of the joint commissions participating shall be members of such authority, which shall have all powers of a joint commission with respect to the functions stated in the resolution creating it.

Membership
of
authority.

Partial
invalidity.

SEC. 14. If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid.

Effective
immediately.

SEC. 15. The purposes to be accomplished by the creation of any such joint commission or authority are declared to be essential, public and governmental purposes. This act is necessary for the preservation of the public peace, health, and safety, the promotion of the public welfare and support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate February 16, 1943.

Passed the House February 17, 1943.