

CHAPTER 227.

[H. B. 561.]

STATE POWER COMMISSION AND PUBLIC UTILITIES.

AN ACT relating to the conservation, development and utilization of the state's electrical resources and of facilities for the generation, transmission and distribution thereof; creating a state power commission and prescribing its powers and duties with respect to power and power facilities in the state; relating to public utility districts, authorizing such districts to join in the exercise of certain powers vested in individual districts and providing for the joint acquisition of certain utility properties; relating to privilege taxes against, and the payment of certain obligations by, public utility districts, amending section 2, chapter 245, Laws of 1941, as amended, making an appropriation, and declaring an emergency as to section 1 hereof.

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

SECTION 1. Section 2, chapter 245, Laws of 1941, as amended by section 1, chapter 259, Laws of 1947, is amended to read as follows:

Section 2. (a) From and after May 1, 1941, there is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. With respect to each such district, such tax shall be the sum of the following amounts: (i) two per cent (2%) of the gross revenues derived by said district from the sale of all "distributed energy," i. e., electric energy which it distributes to consumers but neither generates nor purchases from generating districts; (ii) five per cent (5%) of the gross revenues derived by said district from the sale of all "self generated and distributed energy," i. e., the electric energy which it distributes to customers and also generates; and (iii) five per cent (5%) of the gross revenues derived by said district from the sale of "distributed energy purchased from another gen-

Tax levy on
privilege.

Amounts
of levy.

erating district," i. e., electric energy which it distributes to consumers and also purchases from another district which generated the same.

Report to
Tax Com-
mission.

(b) On or before the 15th day of March, 1942, and of each year thereafter, each district subject to this tax shall file with the Tax Commission a report verified by the affidavit of its manager or secretary on forms prescribed by the Tax Commission. Such report shall state (1) the taxing districts wherein the operating property of the district is located, (2) as to the entire property and as to each such taxing district, the reproduction cost new and less depreciation of such operating property so far as that information is available from the district's existing records without taking additional inventory or procuring an engineering report or survey, (3) actual cost and general description of operating property purchased or constructed, (4) the district's separately stated gross revenues for the preceding year derived from the sale of each of the three classes of electric energy described in section 2(a), and (5) such other and further information as the Tax Commission reasonably may require in order to administer the provisions of this act. In case of failure by a district to file such report, the Commission may proceed to determine the information, which determination shall be contestable by the district only for actual fraud. The Tax Commission shall proceed to determine the fair cash market value of the operating property of each and all of the districts taxable hereunder as of December 31st last past, and the percentage thereof located in each of the taxing districts wherein such operating property is located.

Contents
of report.

Failure to
file report.

Computation
of tax by
Tax Com-
mission.

(c) Prior to May 1, the Tax Commission shall compute the tax imposed by this act for the last preceding calendar year and notify the district of the amount thereof, which shall be payable on or before the following June 1. Upon receipt of the

amount of each tax imposed by this act the Tax Commission shall deposit the same with the State Treasurer, who shall deposit four per cent (4%) thereof in the General Fund of the state and shall distribute the remainder in the manner hereinafter set forth. The State Treasurer shall send a duplicate copy of each such letter of transmittal to the Tax Commission, and the Tax Commission shall instruct the County Treasurer or Treasurers as to the distribution of the money, as hereinafter provided.

Notification and payment.

Four per cent to General Fund.

(d) Immediately after the computation by the Tax Commission of the tax imposed by this act, the Tax Commission shall determine the amount of money which each taxing district in which operating property of the district is located would have received if the levies made in the preceding calendar year for county, city, town, school district and road district purposes, not including excess levies voted by the people, had been applied to the fair cash market value of the district's operating property in the taxing district. These amounts are referred to herein as the "taxing district's tentative tax," their total for all the taxing districts wherein the operating property of a given district is located is referred to herein as such district's "aggregate taxing districts' tentative tax," and their total for any county is herein referred to as the "county districts' tentative tax."

"Taxing district's tentative tax."

"Aggregate taxing district's tentative tax."

"County districts' tentative tax."

With respect to each taxing district in which is located a district's generating plants or transmission lines utilized in the generation or transmission of electric energy sold to other districts, the Tax Commission shall also determine the amount of money which each such taxing district would have received if the levies made for county, city, town, school district and road district purposes, not including excess levies voted by the people, had been

"Taxing district's tentative tax for generation or transmission of energy sold."

applied to the fair cash market value of such generating plants and/or transmission lines in the taxing district. These amounts are referred to herein as the "taxing district's tentative tax for generation or transmission of energy sold" and their total for any county is herein referred to as the "county district's tentative tax for generation or transmission of energy sold."

"County district's tentative tax for generation or transmission of energy sold."

"Contributing district."

Where any district generates electric energy, the whole or any part of which it sells to other districts for distribution to consumers by them, and the remainder, if any, of which it distributes itself to consumers, in such case such selling district and each such purchasing district shall be deemed a "contributing district" and, for the purpose of distribution thereof, sixty per cent (60%) of all the taxes payable by each such contributing district with respect to such electric energy so distributed to consumers shall be pooled by the Tax Commission and distributed to each of the taxing districts in which the generating plants generating such energy or the transmission lines utilized for transmitting such energy are located. Such taxes shall be distributed to each such taxing district in the proportion which its "taxing district's tentative tax for generation or transmission of energy sold" bears to the total of such tentative taxes for all the taxing districts sharing therein.

Sixty per cent shall be pooled.

Distribution to taxing districts.

Proportion.

Distribution of remainder.

Proportion.

The remainder of the taxes collectible from each district hereunder shall be distributed by the Tax Commission to each taxing district in which the operating property of such district is located in the proportion that such "taxing district's tentative tax" bears to said district's "aggregate taxing district's tentative tax": *Provided, however,* That none of such remainder shall be distributed on the basis of any "taxing district's tentative tax for generation and transmission of energy sold."

After deduction therefrom of the state tax of four per cent (4%), the remainder of each such tax payment by any district shall be distributed by the State Treasurer to each county wherein the taxing districts entitled to any portion thereof are located, and shall in turn be distributed by the County Treasurer of each such county to such taxing districts as hereinabove provided. All money received by the county shall be used exclusively for maintenance and operation of the Superior Court and Sheriff's Office of the county; all money received by a city or town shall be expended exclusively for the fire and police departments of the particular city or town to which the same is thus apportioned; all money received by a school district shall be expended exclusively for the public schools in the particular school district to which the same is thus apportioned; all money transmitted to the County Treasurer for road districts shall be expended exclusively for the maintenance and construction of public roads in the particular road districts to which the same is thus apportioned.

Distribution of remainder after four per cent deduction.

Use of money received by county.

By cities and towns.

By school districts.

By road districts.

(e) Interest at the rate of six per cent (6%) per annum shall be added to the tax hereby imposed after the due date. The tax shall constitute a debt to the State of Washington and may be collected as such.

Interest after due date.

(f) As used herein, the term "distributes to consumers" shall mean the sale of electric energy to ultimate consumers thereof, and shall not include sales of electric energy for resale by the purchaser.

"Distributes to consumers" defined.

(g) Whenever any district hereafter acquires an operating property, as defined in section 1 of this act, from any private person, firm, or corporation and a portion of such operating property is situated within the boundaries of any school district and at the time of such acquisition there is an outstanding bonded indebtedness of the school district, then the

Acquiring of operating property situated within school districts with bonded indebtedness.

Additional payments by public utility district.

Amount.

Date of payments.

Voluntary payments.

Joint operation of electric utility properties by districts.

public utility district shall, in addition to the tax imposed by this act, pay directly to such school district a proportion of all subsequent payments by the school district of principal and interest on said bonded indebtedness, said additional payments to be computed and paid as follows: The amount of principal and interest required to be paid by the school district shall be multiplied by the percentage which the assessed value of the property acquired bore to the assessed value of the total property in said school district at the time of such acquisition. Such additional amounts shall be paid by the public utility district to the school district not less than 15 days prior to the date that such principal and interest payments are required to be paid by the school district. In addition, any public utility district which hereafter acquires from any private person, firm, or corporation an operating property situated within a school district, is hereby authorized to make voluntary payments to such school district for the use and benefit of such school district.

SEC. 2. Any two (2) or more public utility districts organized under the provisions of the laws of this state shall have the power, by mutual agreement, to exercise jointly all powers granted to each individual district, and in the exercise of such powers shall have the right and power to acquire jointly all or any part of any electric utility properties which, at the time of the passage of this act, constitutes an inter-connected and physically integrated electric utility system, whether entirely within or partly within and partly without such districts: *Provided*, That any two (2) or more districts so acting jointly, by mutual agreement, shall not acquire any electric utility distribution properties in any other public utility district without the consent of such district, and shall not exercise jointly the

power to condemn any privately owned utility property or any public utility owned by a municipality, to levy taxes or, to create sub-districts.

SEC. 3. The Columbia River and its tributaries within the State of Washington and the rivers flowing from the watersheds of the Cascade and Olympic Mountains, and all other rivers and streams of the State of Washington in so far as they affect the hydroelectric power, are hereby declared to be natural resources of this state, and their development and use by the people of this state and of the United States is declared to be of public benefit. The creation and development of hydroelectric power from such rivers and streams in the interest of the people of this state and such natural resources, including the beds and waters of such rivers, the power and power sites in, upon or adjacent to the watersheds of such rivers, owned or controlled by the people of this state, or which may be recovered by or come within their ownership, possession and control shall always remain inalienable to and ownership, possession and control thereof shall always be vested in, the people of this state. The provisions of this act shall not apply to any river or stream covered by the provisions of chapter 9, Laws of 1949. As this natural resource so declared in this act is directly related with the natural resources of fisheries and game, no permit for construction for the generation of power on any of the waters mentioned in this section shall hereafter be granted by the Supervisor of Hydraulics without the concurrence of the Director of Fisheries and the Director of Game.

Certain rivers and streams are natural resources.

Development is of public benefit.

Ownership vested in people of state and inalienable.

Exemption.

Directors of Fisheries and Game shall concur in granting permits for developments.

SEC. 4. For the purpose of effectuating the policy declared in section 3 of this act and of developing and improving the natural resources of this State of Washington and developing the hydroelectric power resources thereof, there is hereby created a corporate municipal instrumentality of the state to be

Washington State Power Commission created.

known as the "Washington State Power Commission," hereinafter referred to in this section as the "Commission," which shall be a body politic and corporate, a political subdivision of the state, exercising governmental and public powers, may sue and be sued, be perpetual in duration and having the powers and duties hereinafter enumerated, together with such other power as may be conferred upon it by law.

Powers of Commission.

Members of Commission.

SEC. 5. The Commission shall consist of three (3) members appointed by the Governor, with the advice and consent of the Senate; such members of the Commission to serve at the pleasure of the Governor. In making such appointments the Governor shall give due recognition to the varying geographical sections of this state. The members of the Commission shall receive a salary of eight thousand five hundred dollars (\$8,500) per annum, and their necessary traveling and other expenses.

Salaries of members.

Expenses.

Duties of Commission.

SEC. 6. It shall be the duty of the Commission to study, analyze and explore and make reports concerning (a) the development and utilization of hydroelectric power in the state, (b) the present and potential hydroelectric resources of the state, and (c) the utilization and integration of electric facilities and requirements of the state.

Powers of Commission.

Acquisition of real and personal property.

Generate and sell electric energy.

SEC. 7. The Commission shall, and it hereby is, authorized and directed: (a) To acquire by lease, contract, purchase, condemnation or construction, and partly by any or all of such means, all real or personal property necessary to erect or purchase, condemn and operate dams, power houses, transmission lines and to acquire, construct and operate electric transmission systems, standby and auxiliary plants and facilities and to generate, produce, sell at wholesale, transmit and deliver such electric energy to qualified purchasers and, to enter into agree-

ments for interconnection and pooling with projects, plants, systems or facilities of other distributors of electric power, and specifically the Commission is authorized to enter into contracts for the purpose of transmitting, transporting or exchanging electrical energy: *Provided*, That this Commission shall not have the power to acquire by condemnation any generating, transmission or distribution facilities from any private individual, firm or corporation or from any public body, municipality or cooperative: *Provided further*, That in the event that the Federal government should institute any condemnation proceedings against any generation or transmission facilities which are a part of an interconnected electric system within the State of Washington then and in that event this Commission shall have the prior right to acquire such facilities by condemnation proceedings which shall take precedence over any other condemnation proceedings: *Provided further*, That the Commission shall not have the power to acquire, construct or operate any dam or dams or dam sites in any stream or portion thereof in violation of the provisions of chapter 9, Laws of 1949;

(b) To cooperate with the appropriate agencies and officials of the United States government or of any department of this state to the end that any project undertaken under the authority of this act shall be consistent with and in aid of the plans of the United States or such department for the improvement of commerce and navigation, reclamation, flood control and fisheries on or along the rivers and harbors of the State of Washington and be so planned and constructed as to be adaptable to the plans of the United States or such department therefor, so that the necessary channels, locks, canals and other navigational, reclamation, flood control and fisheries facilities shall be constructed and installed

Agreements for inter-connection and pooling.

Restriction as to condemnation.

Condemnation proceedings by Federal government.

Exception as to construction and acquisition of dams and dam sites.

Cooperation with United States and State departments.

by the United States or by such department in, through and as a part of such project;

Negotiations and agreements with Canada.

(c) To negotiate with the proper Canadian authorities and agencies respecting the development of the commerce and navigation on, or the construction or acquisition of, any dam, reservoir or power plant or transmission line in Canada and to plan and agree with Canadian authorities upon cooperative or independent action to the end that the use, control or disposition of any necessary facilities may be utilized and hydroelectric power for the joint or separate use of this state and Canada may be created and developed. Such negotiations and agreements shall be conducted and concluded with due regard to the position of the United States in respect to international agreements, and any such agreements as may be reached with Canadian authorities or agencies may be submitted by the Commission to Congress for its approval, if it be advised that such approval is necessary or desirable;

Congressional approval of agreements.

Approval of plans or projects.

(d) To apply to the appropriate agencies or officials of the United States government and/or the Dominion of Canada or its provinces, including the International Joint Commission, for such licenses, permits or approval of its plans or projects as it may deem necessary or advisable;

Interstate negotiations and contracts.

(e) To negotiate and contract interstate or cooperative compacts with the appropriate agencies or officials of any state or territory or any subdivision thereof, for the purchase, construction, sale, transmission or use of any power or power facilities capable of being utilized for the use or benefit of the people of the State of Washington. In this connection, authority is specifically granted to make similar contracts with any electric company generating or distributing electrical energy either within or without the State of Washington;

(f) To negotiate or contract for the purchase, sale, transmission or use of electrical energy with any person, firm or corporation, including political subdivisions or governmental agencies of this state, any other state or of the United States, at fair and nondiscriminating rates;

Contracts for purchase, sale or transmission of electrical energy.

(g) To study and recommend to the Legislature a fair and reasonable program for payment to the state and the local subdivisions thereof for payments of taxes or payments in lieu of taxes or assessments to the end that the state and local taxing districts will not suffer great or serious damage by reason of the operation or acquisition of the properties of the Commission;

Recommendations to legislature concerning taxation.

(h) To establish the rates for the electrical energy sold or transmitted by the Commission;

Rates for electrical energy.

(i) The Commission shall choose from its own members a Chairman and the Commission shall employ a managing director of the Commission and select such employees, including engineering, marketing, operating and technical skills, as they may require for the performance of their duties, and fix their compensation.

Officers and personnel of Commission.

SEC. 8. 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 act or any of the powers granted by this act.

Existing contracts with United States not impaired.

SEC. 9. The rates, services and practices of the Commission in respect to the power generated, transmitted or sold by it shall not be governed by the regulations of the Department of Public Utilities.

Commission not governed by Department of Public Utilities.

SEC. 10. The Commission shall have no right or power to create any mortgage lien upon its operating property or facilities or to impose any debt, nor

Mortgage liens and imposition of debts.

to suffer or create any financial obligation upon the State of Washington or any of its subdivisions.

Existing laws as to expropriation of water not affected.

Neither shall this act be held to modify, alter or change any existing laws relative to the use or expropriation of water or the functions, powers and duties of any agency or officer thereto appertaining:

Commission qualified to make application for permits and licenses relating to water uses.

Provided, That the Commission shall be qualified to make applications, appropriations and filings with the Supervisor of Hydraulics of the State of Washington or the United States government and to obtain, hold and use permits and licenses for power sites, rights-of-way, water uses or other privileges in the same manner as any other qualified person or operating unit.

Commission not to engage in retail distribution of electrical energy.

SEC. 11. Nothing in this act shall be construed to authorize or empower the Commission to engage in the retail distribution of electric energy: *Provided*, That the Commission may sell and deliver electric energy to consumers located adjacent to its transmission lines who may be without other means of adequate electric supply or to large users of electric energy: *Provided further*, That before such contracts are made the consent of the local political subdivision distributing electricity in the area involved is obtained.

Exception.

SEC. 12. For the purpose of carrying out any or all of the powers herein granted, the Commission shall have the power of eminent domain for the acquisition of either real or personal property, used or useful in connection with the construction of facilities authorized hereunder: *Provided*, That this Commission shall not have the power of eminent domain with respect to any existing facilities for the generation or transmission of electric energy except as provided in section 7 (a) of this act. Condemnation pursuant to this act shall be under the procedure set out in chapter 64, Laws of 1891, as amended: *Provided*, That the Commission may institute con-

Commission to have power of eminent domain.

Exception.

SEC. 12. For the purpose of carrying out any or all of the powers herein granted, the Commission shall have the power of eminent domain for the acquisition of either real or personal property, used or useful in connection with the construction of facilities authorized hereunder: *Provided*, That this Commission shall not have the power of eminent domain with respect to any existing facilities for the generation or transmission of electric energy except as provided in section 7 (a) of this act. Condemnation pursuant to this act shall be under the procedure set out in chapter 64, Laws of 1891, as amended: *Provided*, That the Commission may institute con-

Condemnation procedure.

demnation proceedings in the Superior Court of any county in which any of the property sought to be condemned is located or in which the owner of any thereof does business, and the Court in any such action shall have jurisdiction to condemn property wherever located within the state: *Provided further*, That it shall not be necessary to allege or prove any offer to purchase or inability to agree with the the owners thereof for the purchase of any such property in said proceedings. Upon the filing of a petition for condemnation, as provided in this section, the Court may issue an order restraining the removal from the jurisdiction of the state of any personal property sought to be acquired by the proceedings during the pendency thereof. The Court shall further have the power to issue such orders or process as shall be necessary to place the Commission into possession of any property condemned.

Condemnation procedure.

Powers of Courts.

SEC. 13. For the purpose of paying the cost of acquiring by lease, contract, purchase, condemnation or construction all or any part of such electric systems and for rehabilitating, rebuilding, enlarging or improving all or any part of said system, the Commission is hereby authorized by resolution to issue its revenue bonds which shall constitute obligations only of the Commission and shall be payable solely and only from all or such part of the revenues from the operation of the system as may be provided in and by such resolution. Each such revenue bond shall contain a recital that payment or redemption of the bond and payment of the interest thereon is secured by a direct charge and lien upon the revenues pledged for that purpose and that such bond does not constitute an indebtedness of the State of Washington. Such revenue bonds may bear such date or dates, may mature at such time or times as the Commission shall determine, may be in such denomination or denominations, may be in

Issuance of revenue bonds.

Bonds only obligations of Commission.

Lien on revenues.

Contents, terms and form of bonds.

such form, either coupon or registered, may carry such registration and conversion privileges, may be made subject to such terms of redemption with or without premium, and may contain such other terms and covenants not inconsistent with this act as may be provided in such resolution. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is non-negotiable, each such revenue bond shall at all times be and shall be treated as a negotiable instrument for all purposes. All such bonds shall be signed by the Chairman of the Commission, and any interest coupons appertaining thereto shall bear the signature of the Chairman: *Provided*, That the signature of the Chairman on such coupons may be printed or lithographed facsimile signature. Pending the issuance of definitive bonds, temporary or interim bonds, certificates or receipts of any denomination and with or without coupons attached may be issued as may be provided by said resolution. All bonds issued under or by authority of this act shall be sold to the highest and best bidder after such advertising for bids as the Commission may deem proper: *Provided*, That the Commission may reject any and all bids so submitted and thereafter sell such bonds so advertised under such terms and conditions as the Commission may deem most advantageous to its own interests. The purchase price of all bonds issued hereunder shall be paid to the State Treasurer, as ex officio Treasurer of the Commission, consistent with the provisions of the resolution pursuant to which such bonds have been issued or to the trustee designated in the resolution and held as a separate trust fund to be disbursed on orders of the Commission.

Negotiability.

Signatures on bonds.

Temporary bond.

Sale of bonds.

Payment of purchase price.

Separate trust fund.

In determining the amount of bonds required to be issued there may be included any expenses incurred by the Commission in connection with and

incidental to the issuance and sale of bonds and for the preparation of surveys and estimates and making inspections and examinations, interest during the estimated construction period, and for six (6) months thereafter, and a reasonable amount for working capital and prepaid insurance. The Commission is hereby empowered to include in any resolution authorizing the issuance of the bonds such covenants, stipulations and conditions as may be deemed necessary with respect to the continued use and application of the income and revenues from the undertaking.

Determination of amount of bonds required.

Covenants and conditions as to application of income and revenues.

SEC. 14. The Commission may hold hearings, inquire into any matter relating to the business of the Commission, administer oaths and affirmations, compel by subpoena the attendance of witnesses, the production of relevant books, records, papers and accounts and order the taking of depositions in accordance with the rules and laws regulating the taking of depositions to be used in Superior Court proceedings and the Superior Court of Thurston County, upon request of the Commission, may enforce such subpoena and deposition proceedings. The Commission may adopt necessary rules or regulations of practice and procedure governing its procedure and hearings and establish a schedule of fees and costs to be paid by the parties involved.

Hearings.

Powers of Commission.

Rules and regulations as to practice and procedure.

SEC. 15. Any one feeling aggrieved by any order of the Commission may appeal to the Superior Court of Thurston County. The Attorney General shall represent the Commission at all hearings and upon the review of all of its orders or decisions.

Appeal.

Attorney General to represent Commission.

SEC. 16. There is hereby appropriated to the Commission from the General Fund the sum of one hundred fifty thousand dollars (\$150,000) or so much thereof as may be necessary to carry out the provisions of this act, the same to be repaid to the Gen-

Appropriation to Commission.

eral Fund as soon as the earnings from the facilities to be acquired by the Commission will permit such repayment.

Emergency.

SEC. 17. Section 1 of this act is necessary for the immediate preservation of the public peace, health and safety, and for the support of the state government and its existing public institutions and shall take effect immediately.

Passed the House March 8, 1949.

Passed the Senate March 7, 1949.

Approved by the Governor March 22, 1949.

CHAPTER 228.

[H. B. 415.]

REVENUE AND TAXATION.

AN ACT relating to revenue and taxation; amending sections 4, 5, 6, 7, 16, 19, 21, 31, 32, 35, 37, 40, 53, 82, 83, 87, 91, 92, 96, 99, 188, 189, 191, 192, 193, 202, 203, and 219 of chapter 180, Laws of 1935, as amended; repealing section 14 (a), chapter 180, Laws of 1935, as amended; adding a section 204-A to said chapter 180, Laws of 1935, as amended; and declaring an emergency and providing that this act shall take effect May 1, 1949.

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

Amendment.

SECTION 1. Section 4, chapter 180, Laws of 1935, as last amended by section 1, chapter 156, Laws of 1943, is amended to read as follows:

Business tax.

Section 4. From and after the first day of May, 1935, there is hereby levied and there shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be, as follows:

Measured by gross business.

Persons included.

Extractors.

(a) Upon every person engaging within this state in business as an extractor; as to such per-