

NEW SECTION. Sec. 3. Section 14, chapter 265, Laws of 1971 ex. sess. and RCW 48.32.140 are each hereby repealed.

Passed the House April 29, 1977.

Passed the Senate May 27, 1977.

Approved by the Governor June 7, 1977.

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CHAPTER 184

[House Bill No. 1263]

OPERATING AGENCIES

AN ACT Relating to operating agencies; amending section 43.52.250, chapter 8, Laws of 1965 and RCW 43.52.250; amending section 43.52.260, chapter 8, Laws of 1965 and RCW 43.52.260; amending section 43.52.290, chapter 8, Laws of 1965 and RCW 43.52.290; amending section 43.52.300, chapter 8, Laws of 1965 as amended by section 1, chapter 37, Laws of 1975 1st ex. sess. and RCW 43.52.300; amending section 43.52.350, chapter 8, Laws of 1965 and RCW 43.52.350; amending section 43.52.360, chapter 8, Laws of 1965 and RCW 43.52.360; amending section 43.52.370, chapter 8, Laws of 1965 and RCW 43.52.370; amending section 43.52.391, chapter 8, Laws of 1965 and RCW 43.52.391; amending section 43.52.410, chapter 8, Laws of 1965 and RCW 43.52.410; amending section 43.52.430, chapter 8, Laws of 1965 as amended by section 113, chapter 81, Laws of 1971 and RCW 43.52.430; amending section 43.52.450, chapter 8, Laws of 1965 and RCW 43.52.450; and repealing section 43.52.340, chapter 8, Laws of 1965 and RCW 43.52.340.

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

Section 1. Section 43.52.250, chapter 8, Laws of 1965 and RCW 43.52.250 are each amended to read as follows:

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

~~(("Commission" means the Washington state power commission.))~~

"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 ~~((the Dominion of))~~ 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.

"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.

Sec. 2. Section 43.52.260, chapter 8, Laws of 1965 and RCW 43.52.260 are each amended to read as follows:

~~((It is the intent of this act [1955 c 258] and this chapter that the commission shall represent the state of Washington and aid and assist the public utilities therein to the end that its water resources and other resources shall be properly developed for the best public interest insofar as they affect electric power, and to this end (1) the commission shall develop and integrate such resources as necessary whenever public utilities other than those owned by the United States and its~~

~~agencies are not in a position so to do, and (2) the commission shall join with Canada, the United States, the states thereof, and their agencies to develop and integrate the water resources and other resources of the region, and particularly that area incorporated within the watershed of the Columbia river and its tributaries:))~~

The authority granted in this chapter shall apply equally to the generating of electricity by water power, by steam power, by ~~((atomic))~~ nuclear power or by any other means whatsoever.

Sec. 3. Section 43.52.290, chapter 8, Laws of 1965 and RCW 43.52.290 are each amended to read as follows:

~~Members of ((the commission))~~ the board of directors of an operating agency shall be paid the sum of fifty dollars per day for each day or major part thereof devoted to the business of the ~~((commission))~~ 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 be such other public officer or employee, he shall be paid by the ~~((commission))~~ operating agency such amount as will, together with the compensation for such other public position equal the sum of fifty dollars per day.

Sec. 4. Section 43.52.300, chapter 8, Laws of 1965 as amended by section 1, chapter 37, Laws of 1975 1st ex. sess. and RCW 43.52.300 are each amended to read as follows:

~~((The commission, or))~~ 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 ~~((the commission))~~ 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. ~~((The commission))~~ 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 ~~((commission))~~ operating agency. When any revenue bonds or warrants are outstanding the ~~((commission))~~ 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 ~~((commission))~~ 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 ~~((commission))~~ 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 ~~((commission))~~ 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 ~~((commission))~~ 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 ~~((commission))~~ operating agency may deem necessary to carry on its business, and to delegate to such manager or other employees such authority as the ~~((commission))~~ operating agency shall determine. Such manager and employees shall be appointed for an indefinite time and be removable at the will of the ~~((commission))~~ 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.

Sec. 5. Section 43.52.350, chapter 8, Laws of 1965 and RCW 43.52.350 are each amended to read as follows:

~~((The commission))~~ 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 game and the director of fisheries may jointly find necessary to permit anadromous fish to pass any dam or other obstruction operated by the ~~((commission))~~ operating agency or to replace fisheries damaged or destroyed by such dam or obstruction and ~~((the commission))~~ an operating agency is further authorized to enter into contracts with the department of game and the department of fisheries to provide for the construction and/or operation of such fishways, facilities and hatcheries.

Sec. 6. Section 43.52.360, chapter 8, Laws of 1965 and RCW 43.52.360 are each amended to read as follows:

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 ~~((conservation))~~ 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 ~~((conservation))~~ 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 ~~((conservation))~~ 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 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 in addition to those for which it was formed without the approval of the legislative bodies of a majority of the members thereof. 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 ~~((conservation))~~ 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.

Sec. 7. Section 43.52.370, chapter 8, Laws of 1965 and RCW 43.52.370 are each amended to read as follows:

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 (~~((to the same extent and subject to the same limitations))~~) as is provided (~~((for members of the commission))~~) in RCW 43.52.290: PROVIDED, That the per diem compensation to any member shall not exceed five thousand dollars in any year.

Sec. 8. Section 43.52.391, chapter 8, Laws of 1965 and RCW 43.52.391 are each amended to read as follows:

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. ~~((In addition to the power and authority granted in this chapter to an operating agency, it shall also have all power and authority heretofore granted, and shall be subject to all of the duties imposed upon, the Washington state power commission by RCW 43.52.300 and RCW 43.52.350.))~~

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 six percent per annum.

Sec. 9. Section 43.52.410, chapter 8, Laws of 1965 and RCW 43.52.410 are each amended to read as follows:

Any city or district is authorized to enter into contracts or compacts with ~~((the commission or))~~ any operating agency or a publicly or privately owned public utility for the purchase and sale of electric energy or falling waters.

Sec. 10. Section 43.52.430, chapter 8, Laws of 1965 as amended by section 113, chapter 81, Laws of 1971 and RCW 43.52.430 are each amended to read as follows:

Any party in interest deeming itself aggrieved by any order of ~~((the commission or of))~~ the director of the department of ecology may appeal to the superior court of Thurston county by serving upon the ~~((commission or))~~ director ~~((, as the case may be,))~~ and filing with clerk of said court within thirty days after the entry of the order a notice of appeal. The ~~((commission or))~~ director shall, within ten days after service of the notice of appeal, file with the clerk of the court ~~((its or his))~~ a return containing a true copy of the order appealed from, together with a transcript of the record of the proceeding before the ~~((commission or))~~ director, after which the appeal shall be at issue. The appeal shall be heard and decided by the court upon the record before the ~~((commission or))~~ director and the court may either affirm, set aside, or remand the order appealed from for further proceedings. Appeal

may be had to the supreme court or the court of appeals as in the case of civil appeals.

Sec. 11. Section 43.52.450, chapter 8, Laws of 1965 and RCW 43.52.450 are each amended to read as follows:

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 ~~((the commission or))~~ 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.

NEW SECTION. Sec. 12. Section 43.52.340, chapter 8, Laws of 1965 and RCW 43.52.340 are each hereby repealed.

Passed the House April 23, 1977.

Passed the Senate May 27, 1977.

Approved by the Governor June 7, 1977.

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CHAPTER 185

[Substitute House Bill No. 1266]

STATE DIVISIONS OF BANKING, SAVINGS AND LOAN ASSOCIATIONS—DEPUTY SUPERVISORS

AN ACT Relating to the department of general administration; amending section 43.19.020, chapter 8, Laws of 1965 and RCW 43.19.020; and amending section 43.19.100, chapter 8, Laws of 1965 and RCW 43.19.100.

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

Section 1. Section 43.19.020, chapter 8, Laws of 1965 and RCW 43.19.020 are each amended to read as follows:

The director of general administration shall appoint and deputize an assistant director to be known as the supervisor of banking, who shall have charge and supervision of the division of banking. With the approval of the director, he may appoint and employ bank examiners and such other assistants and personnel as may be necessary to carry on the work of the division.

No person shall be eligible for appointment as supervisor of banking unless he is, and for the last two years prior to his appointment has been, a citizen of the United States and a resident of this state; nor if he is interested in any bank or trust company as director, officer, or stockholder.

In the event of the supervisor's absence the director of general administration shall have the power to deputize one of the assistants of the supervisor to exercise all the powers and perform all the duties prescribed by law with respect to banks