

the application of the provision to other persons or circumstances is not affected.

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## CHAPTER 216

[Engrossed Senate Bill No. 3224]

### MUNICIPALITIES—AUTHORIZED TO ESTABLISH HEATING SYSTEMS AND PROVIDE HEATING SERVICES—CHARGES—FINANCING

AN ACT Relating to heating systems and services; and adding a new chapter to Title 35 RCW.

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

**NEW SECTION.** Sec. 1. Counties, cities, towns, irrigation districts which distribute electricity, sewer, water, and port districts are authorized pursuant to this chapter to establish heating systems and provide heating services from heat sources including, but not limited to, geothermal heat, steam or water heated by a biomass energy system, waste heat, and energy from a cogeneration facility.

**NEW SECTION.** Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Biomass energy system" means a system that provides for the production or collection of organic materials that are primarily waste materials and the conversion or use of that material for the production of energy or substitute fuels through several processes including, but not limited to, burning, pyrolysis, distillation, or anaerobic digestion.

(2) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source.

(3) "Cogeneration facility" means any machinery, equipment, structure, process, or property or any part thereof, installed or acquired for the primary purpose of cogeneration by a person or corporation.

(4) "Geothermal heat" means the natural thermal energy of the earth.

(5) "Waste heat" means the thermal energy released to the environment from an industrial process, electric generation, or other process.

(6) "Heat" means thermal energy.

(7) "Heat source" includes but is not limited to any integral part or process of an industrial facility, cogeneration facility, electric power generation facility, geothermal well or spring, biomass energy system, solar collection facility, or energy extraction process.

(8) "Municipality" means a county, city, town, sewer district, water district, port district, or irrigation district which distributes electricity.

(9) "Heating facilities" means all real and personal property, or interests therein, necessary or useful for: (a) The acquisition, production, or extraction of heat; (b) the storage of heat; (c) the distribution of heat from its source to the place of utilization; (d) the extraction of heat at the place of utilization from the medium by which the heat is distributed; (e) the distribution of heat at the place of utilization; and (f) the conservation of heat.

**NEW SECTION.** Sec. 3. A municipality may construct, purchase, acquire, add to, extend, maintain, and operate a system of heating facilities, within or without its limits, for the purpose of supplying its inhabitants and other persons with heat, with full power to regulate and control the use, distribution, and price of supplying heat, and to enter into agreements for the maintenance and operation of heating facilities under terms and conditions determined by the legislative authority of the municipality. The provision of heat and heating facilities and the establishment and operation of heating systems by a municipality under this chapter are hereby declared to be a public use and a public and strictly municipal purpose. However, nothing in this chapter shall be construed to restrain or limit the authority of any individual, partnership, corporation, or private utility from establishing and operating heating systems.

**NEW SECTION.** Sec. 4. In addition to the general powers under section 3 of this act, and not by way of limitation, municipalities have the following specific powers:

(1) The usual powers of a corporation, to be exercised for public purposes;

(2) To acquire by purchase, gift, or condemnation property or interests in property within and without the municipality, necessary for the construction and operation of heating systems, including additions and extensions of heating systems. No municipality may acquire any heat source by condemnation. To the extent judged economically feasible by the municipality, public property and rights of way shall be utilized in lieu of private property acquired by condemnation. The municipality shall determine in cooperation with existing users that addition of district heating facilities to any public property or rights of way shall not be a hazard or interference with existing uses or, if so, that the cost for any relocation of facilities of existing users shall be a cost and expense of installing the heating facility;

(3) To acquire, install, add to, maintain, and operate heating facilities at a heat source or to serve particular consumers of heat, whether such facilities are located on property owned by the municipality, by the consumer of heat, or otherwise;

(4) To sell, lease, or otherwise dispose of heating facilities;

(5) To contract for the operation of heating facilities;

(6) To apply and qualify for and receive any private or federal grants, loans, or other funds available for carrying out the objects of the municipality under this chapter;

(7) Full and exclusive authority to sell and regulate and control the use, distribution, rates, service, charges, and price of all heat supplied by the municipality and to carry out any other powers and duties under this chapter free from the jurisdiction and control of the utilities and transportation commission;

(8) To utilize fuels other than the heat sources described in section 1 of this act on a standby basis, to meet start up and emergency requirements, to meet peak demands, or to supplement those heat sources as necessary to provide a reliable and economically feasible supply of heat;

(9) To the extent permitted by the state Constitution, to make loans for the purpose of enabling suppliers or consumers of heat to finance heating facilities;

(10) To enter into cooperative agreements providing for the acquisition, construction, ownership, financing, use, control, and regulation of heating systems and heating facilities by more than one municipality or by one or more municipalities on behalf of other municipalities.

NEW SECTION. Sec. 5. If the legislative authority of a municipality deems it advisable that the municipality purchase, acquire, or construct a heating system, or make any additions or extensions to a heating system, the legislative authority shall so provide by an ordinance or a resolution specifying and adopting the system or plan proposed, declaring the estimated cost thereof, as near as may be, and specifying the method of financing and source of funds. Any construction, alteration, or improvement of a heating system by any county, city, town, irrigation district, water district, sewer district, or port district shall be in compliance with the appropriate competitive bidding requirements in Titles 35, 36, 53, 56, 57, or 87 RCW.

NEW SECTION. Sec. 6. A municipality may impose rates, charges, or rentals for heat, service, and facilities provided to customers of the system if the rates charged are uniform for the same class of customers or service. In classifying customers served or service furnished, the legislative authority may consider: The difference in cost of service to the various customers; location of the various customers within or without the municipality; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the heat furnished; the time heat is used; the demand on the system; capital contributions made to the system including, but not limited to, assessments or the amount of capital facilities provided for use by the customer; and any other matters which present a reasonable difference as a ground for distinction.

NEW SECTION. Sec. 7. If prompt payment of a heating rate, charge, or rental is not made, a municipality after reasonable notice may shut off

the heating supply to the building, place, or premises to which the municipality supplied the heating. A municipality may also make an additional charge for late payment.

**NEW SECTION.** Sec. 8. A municipality may charge property owners seeking to connect to the heating system, as a condition to granting the right to connect and in addition to the cost of the connection, such reasonable connection charge as the legislative authority determines to be proper in order that the property owners bear their pro rata share of the cost of the system. Potential customers shall not be compelled to subscribe or connect to the heating system. The cost of connection to the system shall include the cost of acquisition and installation of heating facilities necessary or useful for the connection, including any heating facilities located or installed on the property being served. Connection charges may, in the discretion of the municipality, be made payable in installments over a period of not more than thirty years or the estimated life of the facilities installed, whichever is less. Installments, if any, shall bear interest and penalties at such rates and be payable at such times and in such manner as the legislative authority of the municipality may provide.

**NEW SECTION.** Sec. 9. For the purpose of paying all or a portion of the cost of heating facilities, a municipality may form local improvement districts or utility local improvement districts, foreclose on, levy, and collect assessments, reassessments, and supplemental assessments; and issue local improvement district bonds and warrants in the manner provided by law for cities or towns.

**NEW SECTION.** Sec. 10. For the purpose of providing funds for defraying all or a portion of the costs of planning, purchase, leasing, condemnation, or other acquisition, construction, reconstruction, development, improvement, extension, repair, maintenance, or operation of a heating system, and the implementation of the powers in sections 3 and 4 of this act, a municipality may authorize, by ordinance or resolution, the creation of a special fund or funds into which the municipality shall be obligated to set aside and pay all or any designated proportion or amount of any or all revenues derived from the heating system, including any utility local improvement district assessments, any grants received to pay the cost of the heating system, and any municipal license fees specified in the ordinance or resolution creating such special fund.

**NEW SECTION.** Sec. 11. If the legislative authority of a municipality deems it advisable to finance all or a portion of the costs of planning, purchase, leasing, condemnation, or other acquisition, construction, reconstruction, development, improvement, and extension of a heating system, or for the implementation of the powers in sections 3 and 4 of this act, or for working capital, interest during construction and for a period of up to one year thereafter, debt service and other reserves, and the costs of issuing

revenue obligations, a municipality may issue revenue bonds against the special fund or fund created from revenues or assessments. The revenue bonds so issued may be issued in one or more series and shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times as may be determined by the legislative authority of the municipality, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the legislative authority of the municipality prior to the issuance of the bonds. The legislative authority of the municipality shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. If an officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be such officer before the delivery of the bonds, the signature shall for all purposes have the same effect as if the officer had remained in office until the delivery. The bonds may be issued in coupon or in registered form or both, and provisions may be made for the registration of any coupon bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. Bonds may be sold at public or private sale for such price and bearing interest at such fixed or variable rate as may be determined by the legislative authority of the municipality.

The principal of and interest on any revenue bonds shall be secured by a pledge of the revenues and receipts derived from the heating system, including any amounts pledged to be paid into a special fund under section 10 of this act, and may be secured by a mortgage covering all or any part of the system, including any enlargements of and additions to such system thereafter made. The revenue bonds shall state upon their face that they are payable from a special fund, naming it and the ordinance creating it, and that they do not constitute a general indebtedness of the municipality. The ordinance or resolution under which the bonds are authorized to be issued and any such mortgage may contain agreements and provisions respecting the maintenance of the system, the fixing and collection of rates and charges, the creation and maintenance of special funds from such revenues, the rights and remedies available in the event of default, and other matters improving the marketability of the revenue bonds, all as the legislative authority of the municipality deems advisable. Any revenue bonds issued under this chapter may be secured by a trust agreement by and between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the state. Any such trust agreement or ordinance or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bond owners as may be reasonable and proper and not in violation of law. Any such trust agreement may set forth the rights and

remedies of the bond owners and of the trustee and may restrict the individual right of action by bond owners as is customary in trust agreements or trust indentures.

NEW SECTION. Sec. 12. Revenue warrants may be issued and such warrants and interest thereon may be payable out of the special fund or refunded through the proceeds of the sale of refunding revenue warrants or revenue bonds. Every revenue warrant and the interest thereon issued against the special fund is a valid claim of the owner thereof only as against that fund and the amount of revenue pledged to the fund, and does not constitute an indebtedness of the authorized municipality. Every revenue warrant shall state on its face that it is payable from a special fund, naming it and the ordinance or resolution creating it.

NEW SECTION. Sec. 13. If a municipality fails to set aside and pay into the special fund created for the payment of revenue bonds and warrants the amount which it has obligated itself in the ordinance or resolution creating the fund to set aside and pay therein, the holder of any bond or warrant issued against the bond may bring suit against the municipality to compel it to do so.

NEW SECTION. Sec. 14. Sections 1 through 13 of this act shall constitute a new chapter in Title 35 RCW.

NEW SECTION. Sec. 15. 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.

Passed the Senate April 24, 1983.

Passed the House April 21, 1983.

Approved by the Governor May 16, 1983.

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## CHAPTER 217

[Engrossed Senate Bill No. 3392]

### CITY-OWNED ELECTRICAL UTILITIES—EMPLOYMENT OF PRIVATE ELECTRICAL CONTRACTORS BY CUSTOMERS—CONDITIONS

AN ACT Relating to electrical utility installation; and amending section 3, chapter 56, Laws of 1975 1st ex. sess. and RCW 35.22.640.

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

Sec. 1. Section 3, chapter 56, Laws of 1975 1st ex. sess. and RCW 35.22.640 are each amended to read as follows:

Cities of the first class are relieved from complying with the provisions of RCW 35.22.620 with respect to any public work or improvement relating solely to electrical distribution and generating systems on public rights of way or on municipally owned property: PROVIDED, That if a city-owned