

the health care payer in writing that claims for health care payment will be submitted by use of computer billing tapes or other electronic means.

NEW SECTION. Sec. 5. This chapter shall not be construed to prohibit or limit a prosecution of or civil action against a person for the violation of any other law of this state.

NEW SECTION. Sec. 6. Upon the conviction under this chapter of any provider, the prosecutor shall provide written notification to the appropriate regulatory or disciplinary agency of such conviction.

NEW SECTION. Sec. 7. 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.

NEW SECTION. Sec. 8. Sections 1 through 7 of this act shall constitute a new chapter in Title 48 RCW.

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CHAPTER 244

[Engrossed Substitute Senate Bill No. 4717]

WATER QUALITY—WATER POLLUTION CONTROL FACILITIES—SERVICE PROVIDER AGREEMENTS

AN ACT Relating to water quality services; adding a new section to chapter 35.23 RCW; adding a new section to chapter 35.94 RCW; adding a new section to chapter 36.34 RCW; adding a new section to chapter 39.04 RCW; adding a new section to chapter 54.04 RCW; adding a new section to chapter 56.08 RCW; adding a new section to chapter 57.08 RCW; adding a new chapter to Title 70 RCW; and declaring an emergency.

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

NEW SECTION. Sec. 1. The long-range health and economic and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, and enjoyment of its people. It is the purpose of this chapter to provide public bodies an additional means by which to provide for financing, development, and operation of water pollution control facilities needed for achievement of state and federal water pollution control requirements for the protection of the state's waters.

It is the intent of the legislature that public bodies be authorized to provide service from water pollution control facilities by means of service agreements with public or private parties as provided in this chapter.

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

(1) "Water pollution control facilities" or "facilities" means any facilities, systems, or subsystems owned or operated by a public body, or owned or operated by any person or entity for the purpose of providing service to a public body, for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, residential wastes, commercial wastes, industrial wastes, and agricultural wastes, that are causing or threatening the degradation of subterranean or surface bodies of water due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities do not include dams or water supply systems.

(2) "Public body" means the state of Washington or any agency, county, city or town, political subdivision, municipal corporation, or quasi-municipal corporation.

(3) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any surface or subterranean waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(4) "Agreement" means any agreement to which a public body and a service provider are parties by which the service provider agrees to deliver service to such public body in connection with its design, financing, construction, ownership, operation, or maintenance of water pollution control facilities in accordance with this chapter.

(5) "Service provider" means any privately owned or publicly owned profit or nonprofit corporation, partnership, joint venture, association, or other person or entity that is legally capable of contracting for and providing service with respect to the design, financing, ownership, construction, operation, or maintenance of water pollution control facilities in accordance with this chapter.

NEW SECTION. Sec. 3. (1) Public bodies may enter into agreements with service providers for the furnishing of service in connection with water pollution control facilities pursuant to the process set forth in section 4 of this act. The agreements may provide that a public body pay a minimum periodic fee in consideration of the service actually available without regard to the amount of service actually used during all or any part of the contractual period. Agreements may be for a term not to exceed forty years or the life of the facility, whichever is longer, and may be renewable.

(2) The source of funds to meet periodic payment obligations assumed by a public body pursuant to an agreement permitted under this section

may be paid from taxes, or solely from user fees, charges, or other revenues pledged to the payment of the periodic obligations, or any of these sources.

NEW SECTION. Sec. 4. The legislative authority of a public body may secure services by means of an agreement with a service provider. Such an agreement may obligate a service provider to design, finance, construct, own, operate, or maintain water pollution control facilities by which services are provided to the public body. Service agreements and related agreements under this chapter shall be entered into in accordance with the following procedure:

(1) The legislative authority of the public body shall publish notice that it is seeking to secure certain specified services by means of entering into an agreement with a service provider. The notice shall be published in the official newspaper of the public body, or if there is no official newspaper then in a newspaper in general circulation within the boundaries of the public body, at least once each week for two consecutive weeks. The final notice shall appear not less than sixty days before the date for submission of proposals. The notice shall state (a) the nature of the services needed, (b) the location in the public body's offices where the requirements and standards for construction, operation, or maintenance of projects needed as part of the services are available for inspection, and (c) the final date for the submission of proposals. The legislative authority may undertake a prequalification process by the same procedure set forth in this subsection.

(2) The request for proposals shall (a) indicate the time and place responses are due, (b) include evaluation criteria to be considered in selecting a service provider, (c) specify minimum requirements or other limitations applying to selection, (d) insofar as practicable, set forth terms and provisions to be included in the service agreement, and (e) require the service provider to demonstrate in its proposal that a public body's annual costs will be lower under its proposal than they would be if the public body financed, constructed, owned, operated, and maintained facilities required for service.

(3) The criteria set forth in the request for proposals shall be those determined to be relevant by the legislative authority of the public body, which may include but shall not be limited to: The respondent's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability, and financial resources; cost of the service; nature of facility design proposed by respondents; system reliability; performance standards required for the facilities; compatibility with existing service facilities operated by the public body or other providers of service to the public body; project performance warranties; penalty and other enforcement provisions; environmental protection measures to be used; and allocation of project risks. The legislative authority shall designate persons or entities (a) to assist it in issuing the request for proposals to ensure that proposals will be responsive to its needs, and (b) to

assist it in evaluating the proposals received. The designee shall not be a member of the legislative authority.

(4) After proposals under subsections (1) through (3) of this section have been received, the legislative authority's designee shall determine, on the basis of its review of the proposals, whether one or more proposals have been received from respondents which are (a) determined to be qualified to provide the requested services, and (b) responsive to the notice and evaluation criteria, which shall include, but not be limited to, cost of services. These chosen respondents shall be referred to as the selected respondents in this section. The designee shall conduct a bidder's conference to include all these selected respondents to assure a full understanding of the proposals. The bidder's conference shall also allow the designee to make these selected respondents aware of any changes in the request for proposal. Any information related to revisions in the request for proposal shall be made available to all these selected respondents. Any selected respondent shall be accorded a reasonable opportunity for revision of its proposal prior to commencement of the negotiation provided in subsection (5) of this section, for the purpose of obtaining best and final proposals.

(5) After such conference is held, the designee may negotiate with the selected respondent whose proposal it determines to be the most advantageous to the public body, considering the criteria set forth in the request for proposals. If the negotiation is unsuccessful, the legislative authority may authorize the designee to commence negotiations with any other selected respondent. On completion of this process, the designee shall report to the legislative authority on his or her recommendations and the reasons for them.

(6) Any person aggrieved by the legislative authority's approval of a contract may appeal the determination to an appeals board selected by the public body, which shall consist of not less than three persons determined by the legislative authority to be qualified for such purposes. Such board shall promptly hear and determine whether the public body entered into the agreement in accordance with this chapter and other applicable law. The hearing shall be conducted in the same manner as contested a case under chapter 34.04 RCW. The board shall have the power only to affirm or void the agreement.

(7) Notwithstanding the foregoing, where contracting for design services by the public body is done separately from contracting for other services permitted under this chapter, the contracting for design of water pollution control facilities shall be done in accordance with chapter 39.80 RCW.

(8) A service agreement shall include provision for an option by which a public body may acquire at fair market value facilities dedicated to such service.

(9) Before any service agreement is entered into by the public body, it shall be reviewed and approved by the department of ecology to ensure that the purposes of chapter 90.48 RCW are implemented.

(10) Prior to entering into any service agreement under this chapter, the public body must have made written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the service agreement and that the service agreement is financially sound and advantageous compared to other methods.

(11) Each service agreement shall include project performance bonds or other security by the service provider which in the judgment of the public body is sufficient to secure adequate performance by the service provider.

NEW SECTION. Sec. 5. A public body may sell, lease, or assign public property for fair market value to any service provider as part of a service agreement entered into under the authority of this chapter. The property sold or leased shall be used by the provider, directly or indirectly, in providing services to the public body. Such use may include demolition, modification, or other use of the property as may be necessary to execute the purposes of the service agreement.

NEW SECTION. Sec. 6. A public body that enters into a service agreement pursuant to this chapter, under which a facility is owned wholly or partly by a service provider, shall be eligible for grants or loans to the extent permitted by law or regulation as if the entire portion of the facility dedicated to service to such public body were publicly owned. The grants or loans shall be made to and shall inure to the benefit of the public body and not the service provider. Such grants or loans shall be used by the public body for all or part of its ownership interest in the facility, and/or to defray a part of the payments it makes to the service provider under a service agreement if such uses are permitted under the grant or loan program.

NEW SECTION. Sec. 7. Sections 3 through 6 of this act shall be deemed to provide an additional method for the provision of services from and in connection with facilities and shall be regarded as supplemental and additional to powers conferred by other state laws and by federal laws.

NEW SECTION. Sec. 8. (1) The provisions of chapters 39.12, 39.19, and 39.25 RCW shall apply to a service agreement entered into under this act to the same extent as if the facilities dedicated to such service were owned by a public body.

(2) Subsection (1) of this section shall not be construed to apply to agreements or actions by persons or entities which are not undertaken pursuant to this act.

(3) Except for section 13 of this act, this act shall not be construed as a limitation or restriction on the application of Title 39 RCW to public bodies.

(4) Prevailing wages shall be established as the prevailing wage in the largest city of the county in which facilities are built.

NEW SECTION. Sec. 9. This chapter may be cited as the water quality joint development act.

NEW SECTION. Sec. 10. A new section is added to chapter 35.23 RCW to read as follows:

RCW 35.23.352 does not apply to agreements entered into under authority of chapter 70.— RCW (sections 1 through 9 of this act) provided there is compliance with the procurement procedure under section 4 of this act.

NEW SECTION. Sec. 11. A new section is added to chapter 35.94 RCW to read as follows:

This chapter does not apply to dispositions of utility property in connection with an agreement entered into pursuant to chapter 70.— RCW (sections 1 through 9 of this act) provided there is compliance with the procurement procedure under section 4 of this act.

NEW SECTION. Sec. 12. A new section is added to chapter 36.34 RCW to read as follows:

RCW 36.34.150 through 36.34.190 shall not apply to agreements entered into pursuant to chapter 70.— RCW (sections 1 through 9 of this act) provided there is compliance with the procurement procedure under section 4 of this act.

NEW SECTION. Sec. 13. A new section is added to chapter 39.04 RCW to read as follows:

This chapter does not apply to agreements entered into under authority of chapter 70.— RCW (sections 1 through 9 of this act) provided there is compliance with the procurement procedure under section 4 of this act.

NEW SECTION. Sec. 14. A new section is added to chapter 54.04 RCW to read as follows:

RCW 54.04.070 through 54.04.090 shall not apply to agreements entered into under authority of chapter 70.— RCW (sections 1 through 9 of this act) provided there is compliance with the procurement procedure under section 4 of this act.

NEW SECTION. Sec. 15. A new section is added to chapter 56.08 RCW to read as follows:

RCW 56.08.070, 56.08.080 through 56.08.090, and 56.08.120 through 56.08.160 shall not apply to an agreement entered into under authority of chapter 70.— RCW (sections 1 through 9 of this act) provided there is compliance with the procurement procedure under section 4 of this act.

NEW SECTION. Sec. 16. A new section is added to chapter 57.08 RCW to read as follows:

RCW 57.08.015, 57.08.016, 57.08.050, 57.08.120, and 57.08.130 shall not apply to agreements entered into under authority of chapter 70.—RCW (sections 1 through 9 of this act) provided there is compliance with the procurement procedure under section 4 of this act.

NEW SECTION. Sec. 17. Sections 1 through 9 of this act shall constitute a new chapter in Title 70 RCW.

NEW SECTION. Sec. 18. 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.

NEW SECTION. Sec. 19. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 8, 1986.

Passed the House March 5, 1986.

Approved by the Governor April 3, 1986.

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CHAPTER 245

[Substitute Senate Bill No. 4766] RESIDENTIAL SPACE HEATING

AN ACT Relating to residential space heating; amending RCW 35.21.300, 35.21.301, 54.16.285, 54.16.286, 80.28.010, and 80.28.011; repealing RCW 54.16.290; and providing an expiration date.

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

Sec. 1. Section 35.21.300, chapter 7, Laws of 1965 as last amended by section 3, chapter 6, Laws of 1985 and RCW 35.21.300 are each amended to read as follows:

(1) The lien for charges for service by a city waterworks, or electric light or power plant may be enforced only by cutting off the service until the delinquent and unpaid charges are paid, except that until June 30, ~~((+1986))~~ 1990, electricity for residential space heating may be terminated between November 15 and March 15 only as provided in subsections (2) and (3) of this section. In the event of a disputed account and tender by the owner of the premises of the amount he claims to be due before the service is cut off, the right to refuse service to any premises shall not accrue until suit has been entered by the city and judgment entered in the case.

(2) Until June 30, ~~((+1986))~~ 1990:

(a) Electricity for residential space heating shall not be terminated between November 15 through March 15 if the customer: