

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 96

BY ENVIRONMENT, ENERGY AND TECHNOLOGY COMMITTEE

AN ACT

1 RELATING TO ENERGY RESOURCES; AMENDING SECTION 67-8902, IDAHO CODE, TO PRO-  
2 VIDE FOR THE PROMOTION AND DEVELOPMENT OF CLEAN ENERGY RESOURCES FOR  
3 DECLARED PURPOSES AND TO MAKE A TECHNICAL CORRECTION; AMENDING SEC-  
4 TION 67-8903, IDAHO CODE, TO DEFINE TERMS AND TO REVISE DEFINITIONS;  
5 AMENDING SECTION 67-8905, IDAHO CODE, TO REMOVE OBSOLETE LANGUAGE RE-  
6 GARDING DIRECTOR TERMS; AMENDING SECTION 67-8908, IDAHO CODE, TO REVISE  
7 PROVISIONS REGARDING POWERS OF THE IDAHO ENERGY RESOURCES AUTHORITY  
8 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-8925, IDAHO  
9 CODE, TO PROVIDE FOR CLEAN ENERGY GENERATION PROJECTS; AMENDING SECTION  
10 67-8926, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES; AND DECLARING  
11 AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
12

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. That Section 67-8902, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16 67-8902. DECLARATION OF NECESSITY AND PURPOSE. (1) It is hereby deter-  
17 mined and declared that:

18 (a) Industrial, irrigation, commercial and residential consumers  
19 in the state of Idaho receive electric service from various in-  
20 vestor-owned, cooperative and municipal utilities and the ability of  
21 these utilities to provide reliable and economic electric services at  
22 stable prices is essential to the economy and the economic development  
23 of the state of Idaho and to the health, safety and welfare of its peo-  
24 ple;

25 (b) The regional interconnection of electric utilities causes events  
26 and conditions in other western states to have a significant impact ~~on~~  
27 on the operations of utilities in the state of Idaho and the restruc-  
28 turing of the electric industry in recent years by the federal govern-  
29 ment and in other states has exposed all utilities in Idaho, and the con-  
30 sumers served by them, to volatile market prices, reliability concerns  
31 and other adverse conditions;

32 (c) It is in the best interest of the state of Idaho and its people that  
33 sufficient and reliable electric generation and transmission resources  
34 are developed and made available at cost-based rates in order to enable  
35 these utilities to meet existing and future demands for electric ser-  
36 vices, to provide adequate reserves and to promote reliability at the  
37 most stable rates practicable;

38 (d) The electric utility and energy industries are and will continue to  
39 be capital-intensive industries and the availability of cost-effective  
40 financing to investor-owned, cooperative and municipal utilities will  
41 enhance the ability of these utilities to provide and promote economic  
42 electric services to consumers in the state;

1 (e) Coordination, cooperation and joint ventures between and among  
 2 such utilities with one another and with the private, cooperative, fed-  
 3 eral, state and municipal utilities and agencies that provide wholesale  
 4 and retail electric services in the western states will promote re-  
 5 gional electric reliability and stability and will provide economies of  
 6 scale;

7 (f) It is the intent of the legislature to create the Idaho energy re-  
 8 sources authority to promote the development and financing of facili-  
 9 ties for the benefit of participating utilities and to accomplish the  
 10 purposes stated above, and to authorize the authority to exercise all  
 11 such powers as are necessary to enable it to achieve such purposes and  
 12 to thereby promote and protect the economy of the state of Idaho and the  
 13 health, safety and welfare of its people; and

14 (g) It is in the best interest of the state of Idaho and its people to en-  
 15 courage and promote the development of renewable clean energy resources  
 16 in order to develop sustainable reliable, economic, and long-term  
 17 sources of energy supply, reduce inefficiencies in the use promote ef-  
 18 iciencies in the generation, storage, transmission, and utilization  
 19 of electric energy, and enhance the long-term stability of the energy  
 20 resources and requirements of the state.

21 (2) Nothing contained herein is intended or shall be construed to limit  
 22 or restrict the authority of the Idaho public utilities commission with re-  
 23 spect to the regulation of electric corporations and public utilities pur-  
 24 suant to title 61, Idaho Code.

25 SECTION 2. That Section 67-8903, Idaho Code, be, and the same is hereby  
 26 amended to read as follows:

27 67-8903. DEFINITIONS. When used in this chapter, the following terms  
 28 shall have the following meanings:

29 (1) "Authority" means the Idaho energy resources authority created  
 30 pursuant to section 67-8904, Idaho Code.

31 (2) "Board" means the board of directors of the authority.

32 (3) "Bonds" means any bonds, notes, certificates or other obligations  
 33 or evidences of indebtedness issued by the authority.

34 (4) "Clean energy" means energy derived from biogas, biomass, hydro-  
 35 gen, waste heat, manufacturing process byproducts, hydroelectric, geother-  
 36 mal, nuclear, solar, or wind resources, or any other noncarbon dioxide emit-  
 37 ting source.

38 (5) "Clean energy generation project" means:

39 (a) An electric generating facility or system that uses clean energy as  
 40 a source of energy to generate electricity; and

41 (b) Battery and other energy storage facilities.

42 ~~(4)~~ (6) "Commission" means the Idaho public utilities commission cre-  
 43 ated pursuant to section 61-201, Idaho Code.

44 ~~(5)~~ (7) "Electric cooperative" means a cooperative corporation or as-  
 45 sociation that is:

46 (a) Organized under the provisions of section 501(c) (12) or 1381 of the  
 47 Internal Revenue Code;

48 (b) An Idaho nonprofit corporation pursuant to chapter 30, title 30,  
 49 Idaho Code; and

1 (c) An operating entity or successor entity thereof that owns facilities  
2 and provides electric service to customers in Idaho as of the effective  
3 date of this chapter.

4 ~~(6)~~ (8) "Facility" means any facility necessary, used or useful in connection  
5 with the generation, transmission or distribution of electric power  
6 and energy and any renewable clean energy generation project, in each case  
7 including, but not limited to, all real and personal property, fuel supplies  
8 and transportation facilities, pollution control facilities, battery and  
9 other energy storage facilities, and all equipment and improvements necessary  
10 or desirable in connection with a facility. "Facility" shall include  
11 facilities owned in whole or in part by the authority or a participating  
12 utility, including undivided ownership interests in facilities, leasehold  
13 interests in facilities and other estates, but excludes a generating  
14 facility that sells any portion of its output as a qualifying facility to  
15 a participating utility under provisions of the public utility regulatory  
16 policies act of 1978, 16 U.S.C. section 2601 et seq.

17 ~~(7)~~ (9) "Independent power producer" means any public or private corporation  
18 that is not itself a participating utility, but which may be an affiliate  
19 of a participating utility, that develops any renewable clean energy  
20 generation project undertaken by the authority pursuant to this chapter.

21 ~~(8)~~ (10) "Participating utility" means, with respect to any facilities  
22 undertaken by the authority pursuant to this chapter, any public or private  
23 corporation, electric cooperative or other cooperative corporation or association,  
24 municipal corporation, political subdivision of this state or another state,  
25 state or federal agency, joint operating entity or other entity  
26 that:

27 (a) Owns and operates an electric utility system that provides electric  
28 services to consumers of electricity located in an existing service  
29 area within the boundaries of this state;

30 (b) Provides electric generation, power supply, transmission and/or  
31 ancillary and related services at wholesale to one (1) or more participating  
32 utilities described in paragraph (a) of this subsection; or

33 (c) Is organized or operates as a regional transmission organization  
34 covering all or any part of the state of Idaho and one (1) or more other  
35 states.

36 ~~(9)~~ "Renewable energy" means ~~a source of energy that occurs naturally,~~  
37 ~~is regenerated naturally or uses as a fuel source, a waste product or byproduct~~  
38 ~~from a manufacturing process including, but not limited to, open or~~  
39 ~~closed-loop biomass, fuel cells, geothermal energy, waste heat, cogeneration,~~  
40 ~~solar energy, waterpower and wind.~~

41 ~~(10)~~ "Renewable energy generation project" means ~~an electric generating~~  
42 ~~facility or system that uses renewable energy as its primary source of~~  
43 ~~energy to generate electricity.~~

44 (11) "Revenues" means all receipts, purchase payments, loan repayments,  
45 lease payments, rents, fees and charges, and all other income or  
46 receipts derived by the authority from a participating utility.

47 SECTION 3. That Section 67-8905, Idaho Code, be, and the same is hereby  
48 amended to read as follows:

1           67-8905. DIRECTORS -- TERMS OF OFFICE -- APPOINTMENT -- FILLING VACAN-  
2 CIES AND REMOVAL. (1) The powers of the authority shall be vested in a board  
3 of seven (7) directors to be appointed by the governor and confirmed by the  
4 senate.

5           (2) In making appointments, the governor shall endeavor to appoint in-  
6 dividuals with direct professional experience and demonstrated knowledge in  
7 the electric utility industry. In addition to representatives of investor-  
8 owned, electric cooperative or municipal utilities, the governor may also  
9 appoint individuals with expertise in fields related to the functions of the  
10 authority such as engineering, banking, finance, economics and law.

11           (3) ~~The directors of the authority first appointed by the governor~~  
12 ~~shall serve for terms to be designated by the governor expiring on June 30, as~~  
13 ~~follows: two (2) in 2006, one (1) in 2007, two (2) in 2008 and one (1) in each~~  
14 ~~of 2009 and 2010. After the expiration of these initial terms, directors~~  
15 ~~shall serve for five (5) year terms. Each director shall hold office for the~~  
16 ~~term of his appointment and until his successor shall have been appointed~~  
17 ~~and qualified. Any Each director shall be eligible for reappointment but no~~  
18 ~~director may serve more than two (2) consecutive terms.~~

19           (4) The governor shall fill any vacancy for the remainder of any unex-  
20 pired term.

21           (5) Any director may be removed by the governor for malfeasance or will-  
22 ful neglect of duty or other cause.

23           SECTION 4. That Section 67-8908, Idaho Code, be, and the same is hereby  
24 amended to read as follows:

25           67-8908. POWERS. (1) The authority shall have the following powers,  
26 which are hereby declared to be necessary to enable the authority to carry  
27 out and effectuate the purposes and provisions of this chapter, together  
28 with all powers incidental thereto or necessary for the performance thereof:

29           (a) To have perpetual succession as a body politic and corporate;

30           (b) To adopt bylaws for the regulation of its affairs and the conduct of  
31 its business;

32           (c) To sue and be sued and to prosecute and defend, at law or in equity,  
33 in any court having jurisdiction of the subject matter and of the par-  
34 ties;

35           (d) To have and to use a corporate seal and to alter the same at plea-  
36 sure;

37           (e) To maintain an office at such place or places as it may designate;

38           (f) To make and execute contracts and all other instruments necessary  
39 or convenient for the exercise of its powers and functions under this  
40 chapter;

41           (g) To acquire, whether by purchase, gift, grant, bequest, devise, ex-  
42 change, eminent domain or otherwise, own, hold, improve, lease, trans-  
43 fer, assign, pledge and dispose of, any real or personal property or any  
44 interest therein necessary or convenient in connection with any facil-  
45 ity or its purposes under this chapter; provided however, that the power  
46 of eminent domain is limited to only those purposes and participating  
47 utilities as authorized by section 7-701, Idaho Code;

48           (h) To acquire, construct, reconstruct, renovate, improve, replace,  
49 maintain, repair, manage, operate, lease as lessee or lessor, and reg-

1       ulate any facility; to enter into contracts for any and all of such pur-  
2       poses and for the acquisition and management of fuel supplies, provided  
3       such is reasonably necessary for the operation and maintenance of any  
4       facility; to enter into contracts and agreements to manage risks asso-  
5       ciated with the purchase and sale of energy and energy commodities, pro-  
6       vided such is reasonably necessary for the operation and maintenance of  
7       any facility; and ~~shall~~ to designate one (1) or more qualified partici-  
8       pating utilities as agent or agents of the authority, as agreed to among  
9       the participating utilities, with respect to the foregoing;

10       (i) To sell, lease or otherwise provide by contract to one (1) or more  
11       participating utilities the services, output or product provided by any  
12       or all of the facilities undertaken by the authority upon such terms and  
13       conditions as the authority and the participating utilities shall deem  
14       proper, and to establish, charge, collect and revise from time to time  
15       such rents, fees and charges for such services, output or product as  
16       provided for in this chapter;

17       (j) To borrow money and to issue bonds for any of the purposes described  
18       in this chapter, to issue refunding bonds and to enter into contracts  
19       and agreements determined by the authority to be necessary or desirable  
20       to manage its debt service and interest costs;

21       (k) To establish rules and regulations for the use of facilities and to  
22       designate a participating utility as its agent, ~~to~~ establish rules and  
23       regulations for the use of the facilities undertaken or operated by such  
24       participating utility;

25       (l) To employ or contract for consulting engineers, architects, at-  
26       torneys, accountants, construction and financial experts, superinten-  
27       dents, managers, and such other employees and agents as may be necessary  
28       in its judgment and to fix their compensation;

29       (m) To enter into contracts, agreements or other transactions with and  
30       accept grants and the cooperation of the United States or any agency  
31       thereof or any state or any agency or governmental subdivision thereof,  
32       in furtherance of the purposes of this chapter including, but not lim-  
33       ited to, the development, maintenance, operation, and financing of any  
34       facility and to do any and all things necessary in order to avail itself  
35       of such aid and cooperation;

36       (n) To receive and accept aid or contributions from any source of money,  
37       property, labor, or other things of value, to be held, used, and ap-  
38       plied to carry out the purposes of this chapter subject to such condi-  
39       tions upon which such grants and contributions may be made, including,  
40       but not limited to, gifts or grants from any department or agency of the  
41       United States or any state for any purpose consistent with this chapter;

42       (o) To assign and pledge all or any part of its revenues and income and  
43       to mortgage or otherwise encumber any or all of its facilities and the  
44       site or sites thereof, whether then owned or thereafter acquired, for  
45       the benefit and security of the holders of bonds issued to finance such  
46       facilities or any portion thereof;

47       (p) To make loans to any participating utility to finance the cost of  
48       any facilities in accordance with an agreement between the authority  
49       and such participating utility;

1 (q) To make secured or unsecured loans to a participating utility to  
2 refinance obligations and indebtedness incurred for facilities under-  
3 taken and completed prior to or after the enactment of this chapter when  
4 the authority finds that such financing is in the public interest and  
5 either alleviates the financial hardship upon the participating util-  
6 ity or is in connection with other financing by the authority for such  
7 participating utility or may be expected to result in a cost-effective  
8 delivery of electricity to the consumers served by the participating  
9 utility, or any combination thereof;

10 (r) To charge to and equitably apportion its administrative costs and  
11 expenses incurred in the exercise of the powers and duties conferred by  
12 this chapter among the participating utilities that have entered into  
13 contracts with the authority;

14 (s) To procure insurance against any loss in connection with its prop-  
15 erty and other assets in such amounts and from such insurers as it deems  
16 desirable and to self-insure against such risks as it shall deem to be  
17 reasonable;

18 (t) To invest any funds not needed for immediate use or disbursement,  
19 including any funds held in reserve, in:

20 (i) Bonds, notes and other obligations of the United States or any  
21 agency or instrumentality thereof and other securities secured by  
22 such bonds, notes or other obligations;

23 (ii) Money market funds which are insured or the assets of which  
24 are limited to obligations of the United States or any agency or  
25 instrumentality thereof;

26 (iii) Time certificates of deposit and savings accounts;

27 (iv) Commercial paper which, at the time of its purchase, is rated  
28 in the highest category by a nationally recognized rating service;

29 (v) Property or securities in which the state treasurer may in-  
30 vest funds in the state treasury pursuant to section 67-1210,  
31 Idaho Code; and

32 (vi) With respect to any funds representing bond proceeds or  
33 amounts pledged to the payment of bonds, such other investments as  
34 may be specified in a bond resolution or trust indenture securing  
35 bonds of the authority;

36 (u) To participate in cooperative ventures with any agencies or organi-  
37 zations in order to provide affordable and reliable energy to the resi-  
38 dents of the state;

39 (v) To undertake and finance ~~renewable~~ clean energy generation  
40 projects developed by a participating utility or an independent power  
41 producer;

42 (w) To finance or refinance the cost of conservation measures as pro-  
43 vided in section 67-8926, Idaho Code; and

44 (x) To do all things necessary and convenient to carry out the purposes  
45 of this chapter.

46 (2) Notwithstanding any other provision of this chapter, the authority  
47 shall have no power to:

48 (a) Acquire the operating property of any investor-owned, private, co-  
49 operative, municipal or other utility by the exercise of the power of  
50 eminent domain;

1 (b) Provide financing for the acquisition of the operating property of  
 2 any such utility by or under threat of eminent domain, in either case un-  
 3 less such utility consents in writing to the acquisition; or

4 (c) Deliver retail electricity or related retail products or services  
 5 to any ultimate consumer, whether in violation of the Idaho electric  
 6 supplier stabilization act or otherwise.

7 (3) The authority is not a "taxing district," as defined in section  
 8 67-3901, Idaho Code, and, for so long as any bonds are outstanding or any con-  
 9 tract, agreement or transaction between the authority and a participating  
 10 utility is in effect, the authority shall not have the power and shall not be  
 11 authorized to be a debtor under the U.S. bankruptcy code, title 11 U.S.C., or  
 12 any other bankruptcy, insolvency, moratorium, liquidation, dissolution or  
 13 wind-down law.

14 SECTION 5. That Section 67-8925, Idaho Code, be, and the same is hereby  
 15 amended to read as follows:

16 67-8925. ~~RENEWABLE~~ CLEAN ENERGY GENERATION PROJECTS. The authority  
 17 may undertake any ~~renewable clean~~ energy generation project for the benefit  
 18 of one (1) or more independent power producers and may issue its bonds to  
 19 finance the cost thereof, all to the same extent and subject to the same pro-  
 20 visions applicable to the undertaking and financing of other facilities for  
 21 the benefit of one (1) or more participating utilities. In furtherance of  
 22 the foregoing, an independent power producer shall be deemed to be a partic-  
 23 ipating utility with respect to a ~~renewable clean~~ energy generation project  
 24 for purposes of sections 67-8909, 67-8910 and 67-8911, Idaho Code.

25 SECTION 6. That Section 67-8926, Idaho Code, be, and the same is hereby  
 26 amended to read as follows:

27 67-8926. CONSERVATION MEASURES. (1) For purposes of this section:

28 (a) "Conservation" means a reduction in electric power consumption as a  
 29 result of increases in the efficiency of energy use, production or dis-  
 30 tribution;

31 (b) "Conservation measure" means an action, property, facility, equip-  
 32 ment, improvement, system or measure to promote conservation that pro-  
 33 vides a conservation resource that is acquired by a participating util-  
 34 ity pursuant to the pacific northwest electric power planning and con-  
 35 servation act, 16 U.S.C. section 839 et seq., including, but not limited  
 36 to, loans and grants to consumers for insulation, weatherization, in-  
 37 creased system efficiency and waste energy recovery by direct applica-  
 38 tion;

39 (c) "Conservation resource" means actual or planned reductions in  
 40 electric demand or consumption as a result of one (1) or more conserva-  
 41 tion measures; and

42 (d) "Participating utility" means only a federal agency that is a par-  
 43 ticipating utility described in section 67-8903~~(8)(b)~~, Idaho Code.

44 (2) The authority may, under such terms and conditions as are approved  
 45 by the authority:

1 (a) Issue bonds to finance or refinance the cost of conservation mea-  
2 sures, thereby giving rise to conservation resources that are acquired  
3 by a participating utility;

4 (b) Pledge as security for the bonds payments to be made by a partic-  
5 ipating utility for its acquisition of conservation resources or other  
6 payments to be received in connection with the conservation resources  
7 or the associated conservation measures; and

8 (c) Enter into contracts and agreements, including grant agreements,  
9 between or among the authority, a participating utility, any of the  
10 customers served by the participating utility and other persons or en-  
11 tities in connection with the acquisition of conservation resources by  
12 a participating utility, the financing or refinancing of conservation  
13 measures, the funding, implementation, management or administration of  
14 conservation measures, or the administration of funds, including the  
15 proceeds of bonds and other moneys relating to conservation resources  
16 and conservation measures.

17 (3) Bonds issued pursuant to this section shall be issued in accordance  
18 with sections 67-8915 through 67-8918, Idaho Code, and shall be subject to  
19 all provisions of this act applicable to bonds issued by the authority; pro-  
20 vided that:

21 (a) Conservation resources and conservation measures shall not be con-  
22 sidered to be a facility, other than for purposes of section 67-8903(8),  
23 Idaho Code; and

24 (b) The authority shall not own conservation measures, which may be  
25 owned by or on behalf of any other person or entity.

26 (4) It is hereby determined and declared that all actions taken by the  
27 authority pursuant to this section are in furtherance of the purposes of this  
28 act, and will promote and achieve conservation of natural resources, effi-  
29 ciencies and economies of scale. This section is supplemental to the other  
30 provisions of this act and shall be liberally construed to effectuate the fi-  
31 nancing of conservation measures by the authority.

32 SECTION 7. An emergency existing therefor, which emergency is hereby  
33 declared to exist, this act shall be in full force and effect on and after  
34 July 1, 2023.