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HOUSE BILL 2558

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State of Washington

53rd Legislature

1994 Regular Session

By Representative Zellinsky; by request of Utilities & Transportation Commission

Read first time 01/17/94. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to the regulation by the utilities and  
2 transportation commission of securities issued by regulated utilities  
3 and transportation companies; amending RCW 80.08.040, 80.08.100,  
4 80.08.110, 80.08.120, 80.08.130, 81.08.040, 81.08.100, 81.08.110,  
5 81.08.120, and 81.08.130; adding a new section to chapter 80.08 RCW;  
6 adding a new section to chapter 81.08 RCW; repealing RCW 80.08.045,  
7 80.08.050, 80.08.060, 80.08.105, 81.08.010, 81.08.050, 81.08.060, and  
8 81.08.105; and prescribing penalties.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

10 **Sec. 1.** RCW 80.08.040 and 1987 c 106 s 1 are each amended to read  
11 as follows:

12 ~~((Except as provided in RCW 80.08.045, application for~~  
13 ~~authorization to issue such stocks and stock certificates or other~~  
14 ~~evidence of interest or ownership, and bonds, notes or other evidences~~  
15 ~~of indebtedness shall be made to the commission stating the amount,~~  
16 ~~character, terms and purpose of each proposed issue thereof, and~~  
17 ~~stating such other pertinent details as the commission may require.~~

18 ~~To enable it to determine whether it will issue such order, the~~  
19 ~~commission may hold a hearing and may make such additional inquiry or~~

1 investigation, and examine such witnesses, books, papers, documents and  
2 contracts, and require the filing of such data as it may deem of  
3 assistance. The commission may by its order grant permission for the  
4 issuance of such stocks or stock certificates or other evidence of  
5 interest or ownership, or bonds, notes or other evidences of  
6 indebtedness in the amount applied for, or in a lesser amount, or not  
7 at all, and may attach to the exercise of its permission such condition  
8 or conditions as it may deem reasonable and necessary.

9 If a commission or other agency or agencies is empowered by another  
10 state to regulate and control the amount and character of securities to  
11 be issued by any public service company within such other state, then  
12 the commission shall have the power to agree with such commission or  
13 other agency or agencies of such other state on the issuance of stocks  
14 and stock certificates or other evidence of interest or ownership, and  
15 bonds, notes or other evidences of indebtedness by a public service  
16 company owning or operating a public utility both in such state and in  
17 this state, and shall have the power to approve such issue jointly with  
18 such commission or other agency or agencies and to issue a joint  
19 certificate of such approval: PROVIDED, HOWEVER, That no such joint  
20 approval shall be required in order to express the consent to and  
21 approval of such issue by the state of Washington if said issue is  
22 separately approved by the commission.

23 The public service company making the application may have the  
24 decision or order of the commission reviewed in the courts in the same  
25 manner and by the same procedure as any other order or decision of the  
26 commission, when the public service company shall deem such decision or  
27 order to be in any respect or manner improper, unjust or  
28 unreasonable.)) Any public service company that undertakes to issue  
29 stocks, stock certificates, other evidence of interest or ownership,  
30 bonds, notes, or other evidences of indebtedness, or to create liens on  
31 its property situated within this state shall file with the commission  
32 before such issuance or creation:

33 (1) A description of the purposes for which the issuance or  
34 creation is made, including a certification by an officer authorized to  
35 do so that the proceeds from any such financing is for one or more of  
36 the purposes allowed by this chapter;

37 (2) A description of the proposed issuance or creation including  
38 the terms of financing; and

1        (3) A statement as to why the transaction is in the public  
2 interest.

3        **Sec. 2.** RCW 80.08.100 and 1961 c 14 s 80.08.100 are each amended  
4 to read as follows:

5        ~~((All)) If a public service company issues any stock ((and every~~  
6 ~~stock certificate)), or other evidence of interest or ownership, ((and~~  
7 ~~every)) bond, note, or other evidence of indebtedness((, of a public~~  
8 ~~service company, issued without an order of the commission authorizing~~  
9 ~~the same then in effect shall be void, and likewise all stock and every~~  
10 ~~stock certificate or other evidence of interest or ownership, and every~~  
11 ~~bond, note or other evidence of indebtedness, of a public service~~  
12 ~~company, issued with the authorization of the commission, but not~~  
13 ~~conforming in substance in its provisions to the provisions, if any,~~  
14 ~~which it is required by the order of authorization of the commission to~~  
15 ~~contain, shall be void; but no failure in any other respect to comply~~  
16 ~~with the terms or conditions of the order of authorization of the~~  
17 ~~commission and no defect in, or in connection with the application for~~  
18 ~~or issuance of, such order shall render void any stock or stock~~  
19 ~~certificate or other evidence of interest or ownership, or any bond,~~  
20 ~~note or other evidence of indebtedness, except as to a corporation or~~  
21 ~~person taking the same otherwise than in good faith and for value and~~  
22 ~~without actual notice)) contrary to the provisions of this chapter, the~~  
23 ~~company may be subject to penalty under RCW 80.08.110 and 80.08.120.~~

24        **Sec. 3.** RCW 80.08.110 and 1961 c 14 s 80.08.110 are each amended  
25 to read as follows:

26        Every public service company which, directly or indirectly, issues  
27 or causes to be issued, any stock or stock certificate or other  
28 evidence of interest or ownership, or bond, note or other evidence of  
29 indebtedness, in nonconformity with ~~((the order of the commission~~  
30 ~~authorizing the same, or contrary to)) the provisions of this chapter,~~  
31 or which applies the proceeds from the sale thereof, or any part  
32 thereof, to any purpose other than the purpose or purposes ~~((specified~~  
33 ~~in the commission's order, as herein provided or to any purpose~~  
34 ~~specified in the commission's order in excess of the amount in said~~  
35 ~~order authorized for such purpose)) allowed by this chapter, shall be  
36 subject to a penalty of not more than one thousand dollars for each  
37 offense. Every violation ~~((of any such order, rules, direction, demand~~~~

1 ~~or requirement of the commission, or of any provision of this~~  
2 ~~chapter,))~~ shall be a separate and distinct offense and in case of a  
3 continuing violation every day's continuance thereof shall be deemed to  
4 be a separate and distinct offense.

5 The act, omission or failure of any officer, agent or employee of  
6 any public service company acting within the scope of his official  
7 duties or employment, shall in every case be deemed to be the act,  
8 omission or failure of such public service company.

9 **Sec. 4.** RCW 80.08.120 and 1961 c 14 s 80.08.120 are each amended  
10 to read as follows:

11 Every officer, agent, or employee of a public service company, and  
12 every other person who knowingly authorizes, directs, aids in, issues  
13 or executes, or causes to be issued or executed, any stock or stock  
14 certificate or other evidence of interest or ownership, or bond, note  
15 or other evidence of indebtedness(~~(, in nonconformity with the order of~~  
16 ~~the commission authorizing the same, or))~~ contrary to the provisions of  
17 this chapter, or who(~~(, in any proceedings before the commission,))~~  
18 knowingly makes any false statement or representation or with knowledge  
19 of its falsity files or causes to be filed with the commission any  
20 false statement or representation ((~~which said statement or~~  
21 ~~representation so made, filed or caused to be filed may tend in any way~~  
22 ~~to influence the commission to make an order authorizing the issuance~~  
23 ~~of any stock or stock certificate or other evidence of interest or~~  
24 ~~ownership, or any bond, note or other evidence of indebtedness, or~~  
25 ~~which results in procuring from the commission the making of any such~~  
26 ~~order, or who, with knowledge that any false statement or~~  
27 ~~representation was made to the commission in any proceedings tending in~~  
28 ~~any way to influence the commission to make such order, issues or~~  
29 ~~executes or negotiates, or causes to be issued, executed or negotiated~~  
30 ~~any such stock or stock certificate or other evidence of interest or~~  
31 ~~ownership, or bond, note or other evidence of indebtedness, or who,~~  
32 ~~directly or indirectly, knowingly applies)), or causes or assists to be  
33 applied the proceeds or any part thereof, from the sale of any stock or  
34 stock certificate or other evidence of interest or ownership, or bond,  
35 note or other evidence of indebtedness, to any purpose not ((~~specified~~  
36 ~~in the commission's order, or to any purpose specified in the~~  
37 ~~commission's order in excess of the amount authorized for such~~  
38 ~~purpose)) allowed by this chapter, or who, with knowledge that any~~~~

1 stock or stock certificate or other evidence of interest or ownership,  
2 or bond, note or other evidence of indebtedness, has been issued or  
3 executed in violation of any of the provisions of this chapter,  
4 negotiates, or causes the same to be negotiated, shall be guilty of a  
5 gross misdemeanor.

6 **Sec. 5.** RCW 80.08.130 and 1961 c 14 s 80.08.130 are each amended  
7 to read as follows:

8 ~~((No))~~ Any public service company ((shall henceforth)) that assumes  
9 any obligation or liability as guarantor, indorser, surety or otherwise  
10 in respect to the securities of any other person, firm or corporation,  
11 when such securities are payable at periods of more than twelve months  
12 after the date thereof, ((without having first secured from the  
13 commission an order authorizing it so to do. Every such assumption  
14 made other than in accordance with the order of the commission  
15 authorizing the same shall be void)) shall comply with the filing  
16 requirements of RCW 80.08.040.

17 NEW SECTION. **Sec. 6.** A new section is added to chapter 80.08 RCW  
18 to read as follows:

19 No action by a public service company in compliance with nor by the  
20 commission in conformance with the requirements of this chapter may in  
21 any way affect the authority of the commission over rates, service,  
22 accounts, valuations, estimates, or determinations of costs, or any  
23 matters whatsoever that may come before it.

24 NEW SECTION. **Sec. 7.** The following acts or parts of acts are each  
25 repealed:

- 26 (1) RCW 80.08.045 and 1987 c 106 s 2;
- 27 (2) RCW 80.08.050 and 1961 c 14 s 80.08.050;
- 28 (3) RCW 80.08.060 and 1961 c 14 s 80.08.060; and
- 29 (4) RCW 80.08.105 and 1983 c 4 s 10 & 1961 c 14 s 80.08.105.

30 **Sec. 8.** RCW 81.08.040 and 1961 c 14 s 81.08.040 are each amended  
31 to read as follows:

32 ~~((Application for authorization to issue such stocks and stock~~  
33 ~~certificates or other evidence of interest or ownership, and bonds,~~  
34 ~~notes or other evidences of indebtedness shall be made to the~~  
35 ~~commission stating the amount, character, terms and purpose of each~~

1 proposed issue thereof, and stating such other pertinent details as the  
2 commission may require.

3 To enable it to determine whether it will issue such order, the  
4 commission may hold a hearing and may make such additional inquiry or  
5 investigation, and examine such witnesses, books, papers, documents and  
6 contracts, and require the filing of such data as it may deem of  
7 assistance. The commission may by its order grant permission for the  
8 issuance of such stocks or stock certificates or other evidence of  
9 interest or ownership, or bonds, notes or other evidences of  
10 indebtedness in the amount applied for, or in a lesser amount, or not  
11 at all, and may attach to the exercise of its permission such condition  
12 or conditions as it may deem reasonable and necessary.

13 If a commission or other agency or agencies is empowered by another  
14 state to regulate and control the amount and character of securities to  
15 be issued by any public service company within such other state, then  
16 the commission shall have the power to agree with such commission or  
17 other agency or agencies of such other state on the issuance of stocks  
18 and stock certificates or other evidence of interest or ownership, and  
19 bonds, notes or other evidences of indebtedness by a public service  
20 company owning or operating a public utility both in such state and in  
21 this state, and shall have the power to approve such issue jointly with  
22 such commission or other agency or agencies and to issue a joint  
23 certificate of such approval: PROVIDED, HOWEVER, That no such joint  
24 approval shall be required in order to express the consent to and  
25 approval of such issue by the state of Washington if said issue is  
26 separately approved by the commission.

27 The public service company making the application may have the  
28 decision or order of the commission reviewed in the courts in the same  
29 manner and by the same procedure as any other order or decision of the  
30 commission, when the public service company shall deem such decision or  
31 order to be in any respect or manner improper, unjust or  
32 unreasonable.)) Any public service company that undertakes to issue  
33 stocks, stock certificates, other evidence of interest or ownership,  
34 bonds, notes, or other evidences of indebtedness, or to create liens on  
35 its property situated within this state shall file with the commission  
36 before such issuance or creation:

37 (1) A description of the purposes for which the issuance or  
38 creation is made, including a certification by an officer authorized to

1 do so that the proceeds from any such financing is for one or more of  
2 the purposes allowed by this chapter;

3 (2) A description of the proposed issuance or creation including  
4 the terms of financing; and

5 (3) A statement as to why the transaction is in the public  
6 interest.

7 **Sec. 9.** RCW 81.08.100 and 1961 c 14 s 81.08.100 are each amended  
8 to read as follows:

9 ~~((All))~~ If a public service company issues any stock ((and every)),  
10 stock certificate, or other evidence of interest or ownership, ((and  
11 every)) bond, note, or other evidence of indebtedness, ((of a public  
12 service company, issued without an order of the commission authorizing  
13 the same then in effect shall be void, and likewise all stock and every  
14 stock certificate or other evidence of interest or ownership, and every  
15 bond, note or other evidence of indebtedness, of a public service  
16 company, issued with the authorization of the commission, but not  
17 conforming in substance in its provisions to the provisions, if any,  
18 which it is required by the order of authorization of the commission to  
19 contain, shall be void; but no failure in any other respect to comply  
20 with the terms or conditions of the order of authorization of the  
21 commission and no defect in, or in connection with the application for  
22 or issuance of, such order shall render void any stock or stock  
23 certificate or other evidence of interest or ownership, or any bond,  
24 note or other evidence of indebtedness, except as to a corporation or  
25 person taking the same otherwise than in good faith and for value and  
26 without actual notice)) contrary to the provisions of this chapter, the  
27 company may be subject to penalty under RCW 81.08.110 and 81.08.120.

28 **Sec. 10.** RCW 81.08.110 and 1961 c 14 s 81.08.110 are each amended  
29 to read as follows:

30 Every public service company which, directly or indirectly, issues  
31 or causes to be issued, any stock or stock certificate or other  
32 evidence of interest or ownership, or bond, note or other evidence of  
33 indebtedness, in nonconformity with ~~((the order of the commission~~  
34 ~~authorizing the same, or contrary to))~~ the provisions of this chapter,  
35 or which applies the proceeds from the sale thereof, or any part  
36 thereof, to any purpose other than the purpose or purposes ~~((specified~~  
37 ~~in the commission's order, as herein provided or to any purpose~~

1 ~~specified in the commission's order in excess of the amount in said~~  
2 ~~order authorized for such purpose)) allowed by this chapter shall be~~  
3 subject to a penalty of not more than one thousand dollars for each  
4 offense. Every violation of any such order, rules, direction, demand  
5 or requirement of the department, or of any provision of this chapter,  
6 shall be a separate and distinct offense and in case of a continuing  
7 violation every day's continuance thereof shall be deemed to be a  
8 separate and distinct offense.

9 The act, omission or failure of any officer, agent or employee of  
10 any public service company acting within the scope of his official  
11 duties or employment, shall in every case be deemed to be the act,  
12 omission or failure of such public service company.

13 **Sec. 11.** RCW 81.08.120 and 1961 c 14 s 81.08.120 are each amended  
14 to read as follows:

15 Every officer, agent, or employee of a public service company, and  
16 every other person who knowingly authorizes, directs, aids in, issues  
17 or executes, or causes to be issued or executed, any stock or stock  
18 certificate or other evidence of interest or ownership, or bond, note  
19 or other evidence of indebtedness(~~(, in nonconformity with the order of~~  
20 ~~the commission authorizing the same, or))~~ contrary to the provisions of  
21 this chapter, or who(~~(, in any proceedings before the commission,)~~)  
22 knowingly makes any false statement or representation or with knowledge  
23 of its falsity files or causes to be filed with the commission any  
24 false statement or representation ((~~which said statement or~~  
25 ~~representation so made, filed or caused to be filed may tend in any way~~  
26 ~~to influence the commission to make an order authorizing the issuance~~  
27 ~~of any stock or stock certificate or other evidence of interest or~~  
28 ~~ownership, or any bond, note or other evidence of indebtedness, or~~  
29 ~~which results in procuring from the commission the making of any such~~  
30 ~~order, or who, with knowledge that any false statement or~~  
31 ~~representation was made to the commission in any proceedings tending in~~  
32 ~~any way to influence the commission to make such order, issues or~~  
33 ~~executes or negotiates, or causes to be issued, executed or negotiated~~  
34 ~~any such stock or stock certificate or other evidence of interest or~~  
35 ~~ownership, or bond, note or other evidence of indebtedness, or who,~~  
36 ~~directly or indirectly, knowingly applies,)~~) or causes or assists to be  
37 applied the proceeds or any part thereof, from the sale of any stock or  
38 stock certificate or other evidence of interest or ownership, or bond,



1 note or other evidence of indebtedness, to any purpose not (~~specified~~  
2 ~~in the commission's order, or to any purpose specified in the~~  
3 ~~commission's order in excess of the amount authorized for such~~  
4 ~~purpose,~~) allowed by this chapter or who, with knowledge that any  
5 stock or stock certificate or other evidence of interest or ownership,  
6 or bond, note or other evidence of indebtedness, has been issued or  
7 executed in violation of any of the provisions of this chapter  
8 negotiates, or causes the same to be negotiated, shall be guilty of a  
9 gross misdemeanor.

10 **Sec. 12.** RCW 81.08.130 and 1961 c 14 s 81.08.130 are each amended  
11 to read as follows:

12 (~~No~~) Any public service company (shall henceforth) that assumes  
13 any obligation or liability as guarantor, indorser, surety or otherwise  
14 in respect to the securities of any other person, firm or corporation,  
15 when such securities are payable at periods of more than twelve months  
16 after the date thereof, (without having first secured from the  
17 commission an order authorizing it so to do. Every such assumption  
18 made other than in accordance with the order of the commission  
19 authorizing the same shall be void) shall comply with the filing  
20 requirements of RCW 81.08.040.

21 NEW SECTION. **Sec. 13.** A new section is added to chapter 81.08 RCW  
22 to read as follows:

23 No action by a public service company in compliance with nor by the  
24 commission in conformance with the requirements of this chapter may in  
25 any way affect the authority of the commission over rates, service,  
26 accounts, valuations, estimates, or determinations of costs, or any  
27 matters whatsoever that may come before it.

28 NEW SECTION. **Sec. 14.** The following acts or parts of acts are  
29 each repealed:

30 (1) RCW 81.08.010 and 1981 c 13 s 3, 1965 ex.s. c 105 s 3, & 1961  
31 c 14 s 81.08.010;

32 (2) RCW 81.08.050 and 1961 c 14 s 81.08.050;

33 (3) RCW 81.08.060 and 1961 c 14 s 81.08.060; and

34 (4) RCW 81.08.105 and 1983 c 4 s 11 & 1961 c 14 s 81.08.105.

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