
SUBSTITUTE SENATE BILL 5034

State of Washington

62nd Legislature

2011 Regular Session

By Senate Economic Development, Trade & Innovation (originally sponsored by Senators Kilmer, Kastama, Shin, Hatfield, Zarelli, Conway, and Hewitt)

READ FIRST TIME 02/08/11.

1 AN ACT Relating to private infrastructure development; amending RCW
2 80.04.010, 80.04.110, 80.04.160, 80.04.250, 80.04.500, 80.28.010,
3 80.28.020, 80.28.030, 80.28.040, 80.28.050, 80.28.060, 80.28.080,
4 80.28.090, 80.28.100, 80.28.110, 80.28.120, 80.28.130, 80.28.185,
5 80.28.240, 80.28.270, 80.28.275, 7.60.025, and 36.94.110; adding new
6 sections to chapter 80.28 RCW; adding a new section to chapter 80.04
7 RCW; creating new sections; and providing a contingent effective date.

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

9 NEW SECTION. **Sec. 1.** The legislature recognizes the critical
10 importance of infrastructure to the development of industrial,
11 commercial, and residential properties and finds that infill
12 development is often limited by the lack of infrastructure. The
13 legislature further finds that in many areas, public funding to extend
14 infrastructure is not available. It is the purpose of this act to
15 allow private utilities to provide infrastructure needed for economic
16 development in a manner that minimizes development sprawl.

17 **Sec. 2.** RCW 80.04.010 and 1995 c 243 s 2 are each amended to read
18 as follows:

1 As used in this title, unless specifically defined otherwise or
2 unless the context indicates otherwise:

3 (1) "Automatic location identification" means a system by which
4 information about a caller's location, including the seven-digit number
5 or ten-digit number used to place a 911 call or a different seven-digit
6 number or ten-digit number to which a return call can be made from the
7 public switched network, is forwarded to a public safety answering
8 point for display.

9 (2) "Automatic number identification" means a system that allows
10 for the automatic display of the seven-digit or ten-digit number used
11 to place a 911 call.

12 (3) "Commission" means the utilities and transportation commission.

13 (4) "Commissioner" means one of the members of such commission.

14 (5) "Competitive telecommunications company" means a
15 telecommunications company which has been classified as such by the
16 commission pursuant to RCW 80.36.320.

17 (6) "Competitive telecommunications service" means a service which
18 has been classified as such by the commission pursuant to RCW
19 80.36.330.

20 (7) "Corporation" includes a corporation, company, association or
21 joint stock association.

22 (8) "Person" includes an individual, a firm or partnership.

23 (9) "Gas plant" includes all real estate, fixtures and personal
24 property, owned, leased, controlled, used or to be used for or in
25 connection with the transmission, distribution, sale or furnishing of
26 natural gas, or the manufacture, transmission, distribution, sale or
27 furnishing of other type gas, for light, heat or power.

28 (10) "Gas company" includes every corporation, company,
29 association, joint stock association, partnership and person, their
30 lessees, trustees or receiver appointed by any court whatsoever, and
31 every city or town, owning, controlling, operating or managing any gas
32 plant within this state.

33 (11) "Electric plant" includes all real estate, fixtures and
34 personal property operated, owned, used or to be used for or in
35 connection with or to facilitate the generation, transmission,
36 distribution, sale or furnishing of electricity for light, heat, or
37 power for hire; and any conduits, ducts or other devices, materials,

1 apparatus or property for containing, holding or carrying conductors
2 used or to be used for the transmission of electricity for light, heat
3 or power.

4 (12) "Electrical company" includes any corporation, company,
5 association, joint stock association, partnership and person, their
6 lessees, trustees or receivers appointed by any court whatsoever (other
7 than a railroad or street railroad company generating electricity
8 solely for railroad or street railroad purposes or for the use of its
9 tenants and not for sale to others), and every city or town owning,
10 operating or managing any electric plant for hire within this state.
11 "Electrical company" does not include a company or person employing a
12 cogeneration facility solely for the generation of electricity for its
13 own use or the use of its tenants or for sale to an electrical company,
14 state or local public agency, municipal corporation, or quasi municipal
15 corporation engaged in the sale or distribution of electrical energy,
16 but not for sale to others, unless such company or person is otherwise
17 an electrical company.

18 (13) "LATA" means a local access transport area as defined by the
19 commission in conformance with applicable federal law.

20 (14) "Private telecommunications system" means a telecommunications
21 system controlled by a person or entity for the sole and exclusive use
22 of such person, entity, or affiliate thereof, including the provision
23 of private shared telecommunications services by such person or entity.
24 "Private telecommunications system" does not include a system offered
25 for hire, sale, or resale to the general public.

26 (15) "Private shared telecommunications services" includes the
27 provision of telecommunications and information management services and
28 equipment within a user group located in discrete private premises in
29 building complexes, campuses, or high-rise buildings, by a commercial
30 shared services provider or by a user association, through privately
31 owned customer premises equipment and associated data processing and
32 information management services and includes the provision of
33 connections to the facilities of a local exchange and to interexchange
34 telecommunications companies.

35 (16) "Private switch automatic location identification service"
36 means a service that enables automatic location identification to be
37 provided to a public safety answering point for 911 calls originating
38 from station lines served by a private switch system.

1 (17) "Radio communications service company" includes every
2 corporation, company, association, joint stock association,
3 partnership, and person, their lessees, trustees, or receivers
4 appointed by any court, and every city or town making available
5 facilities to provide radio communications service, radio paging, or
6 cellular communications service for hire, sale, or resale.

7 (18) "Telecommunications company" includes every corporation,
8 company, association, joint stock association, partnership and person,
9 their lessees, trustees or receivers appointed by any court whatsoever,
10 and every city or town owning, operating or managing any facilities
11 used to provide telecommunications for hire, sale, or resale to the
12 general public within this state.

13 (19) "Noncompetitive telecommunications service" means any service
14 which has not been classified as competitive by the commission.

15 (20) "Facilities" means lines, conduits, ducts, poles, wires,
16 cables, cross-arms, receivers, transmitters, instruments, machines,
17 appliances, instrumentalities and all devices, real estate, easements,
18 apparatus, property and routes used, operated, owned or controlled by
19 any telecommunications company to facilitate the provision of
20 telecommunications service.

21 (21) "Telecommunications" is the transmission of information by
22 wire, radio, optical cable, electromagnetic, or other similar means.
23 As used in this definition, "information" means knowledge or
24 intelligence represented by any form of writing, signs, signals,
25 pictures, sounds, or any other symbols.

26 (22) "Water system" includes all real estate, easements, fixtures,
27 personal property, dams, dikes, head gates, weirs, canals, reservoirs,
28 flumes or other structures or appliances operated, owned, used or to be
29 used for or in connection with or to facilitate the supply, storage,
30 distribution, sale, furnishing, diversion, carriage, apportionment or
31 measurement of water for power, irrigation, reclamation, manufacturing,
32 municipal, domestic or other beneficial uses for hire.

33 (23)(a) "Water company" includes every corporation, company,
34 association, joint stock association, partnership and person, their
35 lessees, trustees or receivers appointed by any court whatsoever, and
36 every city or town owning, controlling, operating, or managing any
37 water system for hire within this state(~~(:—PROVIDED, That)~~).

1 (b) For purposes of commission jurisdiction (~~it shall~~), "water
2 company" does not include any water system serving less than one
3 hundred customers where the average annual gross revenue per customer
4 does not exceed three hundred dollars per year, which revenue figure
5 may be increased annually by the commission by rule adopted pursuant to
6 chapter 34.05 RCW to reflect the rate of inflation as determined by the
7 implicit price deflator of the United States department of commerce(~~+~~
8 ~~AND PROVIDED FURTHER, That such~~). The measurement of customers or
9 revenues (~~shall~~) must include all portions of water companies having
10 common ownership or control, regardless of location or corporate
11 designation.

12 (c) "Control" (~~as used herein shall be~~) is defined by the
13 commission by rule and (~~shall~~) does not include management by a
14 satellite agency as defined in chapter 70.116 RCW if the satellite
15 agency is not an owner of the water company.

16 (d) "Water company" also includes, for auditing purposes only,
17 nonmunicipal water systems which are referred to the commission
18 pursuant to an administrative order from the department, or the city or
19 county as provided in RCW 80.04.110. (~~However,~~)

20 (e) Water companies exempt from commission regulation (~~shall be~~)
21 are subject to the provisions of chapter 19.86 RCW. A water company
22 cannot be removed from regulation except with the approval of the
23 commission. Water companies subject to regulation may petition the
24 commission for removal from regulation if the number of customers falls
25 below one hundred or the average annual revenue per customer falls
26 below three hundred dollars. The commission is authorized to maintain
27 continued regulation if it finds that the public interest so requires.

28 (24) "Cogeneration facility" means any machinery, equipment,
29 structure, process, or property, or any part thereof, installed or
30 acquired for the primary purpose of the sequential generation of
31 electrical or mechanical power and useful heat from the same primary
32 energy source or fuel.

33 (25) "Public service company" includes every gas company,
34 electrical company, telecommunications company, wastewater company, and
35 water company. Ownership or operation of a cogeneration facility does
36 not, by itself, make a company or person a public service company.

37 (26) "Local exchange company" means a telecommunications company
38 providing local exchange telecommunications service.

1 (27) "Department" means the department of health.

2 (~~The term~~) (28) "Service" is used in this title in its broadest
3 and most inclusive sense.

4 (29)(a) "Wastewater company" means a corporation, company,
5 association, joint stock association, partnership and person, their
6 lessees, trustees, or receivers that owns or proposes to develop and
7 own a system of sewerage that is designed for a peak daily flow of
8 twenty-seven thousand to one hundred thousand gallons per day if
9 treatment is by a large on-site sewage system, or to serve one hundred
10 or more customers.

11 (b) For purposes of commission jurisdiction, wastewater company
12 does not include (i) municipal, county, or other publicly owned systems
13 of sewerage; or (ii) wastewater companies service to customers outside
14 of an urban growth area as defined in RCW 36.70A.030.

15 (30) "System of sewerage" means collection, treatment, and disposal
16 facilities and services for sewage, or storm or surface water run-off.

17 NEW SECTION. Sec. 3. A new section is added to chapter 80.28 RCW
18 to read as follows:

19 (1) A wastewater company may not own or develop a system of
20 sewerage for the purpose of providing service for compensation without
21 first having obtained from the commission a certificate declaring that
22 the public convenience and necessity requires such service.

23 (2) Issuance of the certificate of public convenience and necessity
24 must be determined on, but not limited to, the following factors:

25 (a) A comprehensive business plan detailing the design,
26 construction, operation, and maintenance of the proposed service
27 system;

28 (b) Demonstration of sufficient financial resources to properly
29 operate and maintain the proposed system, and to replace and upgrade
30 capital assets;

31 (c) The need to develop a new stand alone system instead of
32 connecting to an existing system;

33 (d) A statement of prior experience, if any, in such field by the
34 petitioner, set out in an affidavit or declaration;

35 (e) A certification from the municipal corporation that it is not
36 willing and able to provide the sewerage services being proposed; and

1 (f) A certification from the municipal corporation that the
2 company's proposed service is consistent with the locally approved
3 general sewer plan.

4 (3) The commission may, after providing notice and an opportunity
5 for public comment, issue certificates, or for good cause shown refuse
6 to issue them, or issue them for the partial exercise only of the
7 privilege sought, and may attach to the exercise of the rights granted
8 such terms and conditions as, in its judgment, the public convenience
9 and necessity may require.

10 (4) No certificate may be transferred to any private or nonprofit
11 entity unless authorized by the commission.

12 (5)(a) Prior to the commission approving a wastewater company to
13 provide new service or extend existing service, the wastewater company
14 must file and continuously maintain in effect, a bond, or equivalent
15 surety as determined by the commission, with the commission to ensure
16 that there are sufficient funds to:

- 17 (i) Design, construct, operate, and maintain the proposed system;
- 18 (ii) Replace and upgrade capital assets as required by federal or
19 state law, department of health, or department of ecology order; and
- 20 (iii) Allow additional connections to the system, if approved by
21 the department of health or the department of ecology.

22 (b) The bond, or its equivalent, is payable under this section to
23 the commission upon:

- 24 (i) A finding under sections 5(1), 13(3), or 14(3) of this act; or
- 25 (ii) Notice that the company does not intend to renew the bond or
26 its equivalent surety or has failed to renew the bond or its equivalent
27 surety.

28 (c) The commission must hold the payment in trust until an
29 acquiring wastewater company is designated under section 5 of this act
30 or a receiving entity is designated under section 13(3) or 14(3) of
31 this act, at which point the funds will be made available to the
32 company or entity to expend as directed by the commission.

33 (6) For purposes of issuing certificates under this chapter, the
34 commission may adopt rules to implement this section.

35 (7) A wastewater company must obtain commission approval before
36 expanding an existing system beyond the approved capacity set forth in
37 its certificate or acquiring new systems, either by construction or
38 purchase.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 80.04 RCW
2 to read as follows:

3 (1) Every wastewater company subject to regulation by the
4 commission must, on or before the date specified by the commission for
5 filing annual reports under RCW 80.04.080, pay to the commission a
6 regulatory fee.

7 (2) The commission must assess such regulatory fees in amounts
8 sufficient for the commission to recover the commission's actual and
9 reasonable costs of supervising and regulating wastewater companies.

10 (3) Any payment of a fee assessed under this section made after the
11 due date must include a late fee of two percent of the amount due.

12 (4) Delinquent fees accrue interest at the rate of one percent per
13 month.

14 (5) The provisions of RCW 80.04.030, 80.04.040, and 80.04.050 apply
15 to regulatory fees for wastewater companies.

16 (6) The commission is authorized and empowered to adopt and issue
17 rules and regulations to implement this section, including establishing
18 the methodologies and procedures for developing, assessing, and
19 collecting fees under this section.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 80.28 RCW
21 to read as follows:

22 (1) If the commission determines, after providing notice and
23 opportunity for a hearing in the manner required for complaints under
24 RCW 80.04.110, that a wastewater company is unfit to provide wastewater
25 service on any system of sewerage under its ownership, the commission
26 may order the transfer of any such system or systems to a capable
27 wastewater company.

28 (2) In determining whether a wastewater company is unfit to provide
29 wastewater service on a system of sewerage in consultation with the
30 department of health or the department of ecology as appropriate to the
31 agencies' jurisdiction, the commission may consider the company's
32 technical and managerial expertise to operate the system of sewerage,
33 the company's financial soundness and the company's willingness and
34 ability to make ongoing investments necessary to maintain compliance
35 with statutory and regulatory standards for the safety, adequacy,
36 efficiency, and reasonableness of the service provided.

1 (3) Before ordering the transfer of a system of sewerage owned by
2 a wastewater company that is unfit to provide service, the commission
3 must first determine that:

4 (a) Alternatives to the transfer are impractical or not
5 economically feasible;

6 (b) The acquiring wastewater company is willing and able to acquire
7 the system or systems of sewerage, financially sound, and has the
8 technical and managerial expertise to own and operate the system or
9 systems of sewerage in compliance with applicable statutory and
10 regulatory standards; and

11 (c) Rates paid by existing customers served by the acquiring
12 wastewater company will not increase unreasonably because of the
13 acquisition of the system of sewerage, or because of expenditures that
14 may be necessary to assure compliance with applicable statutory and
15 regulatory standards for the safety, adequacy, efficiency, and
16 reasonableness of the service provided.

17 (4) The sale price for the unfit wastewater company's system or
18 systems of sewerage assets must be determined by agreement between the
19 unfit wastewater company and the acquiring capable wastewater company
20 subject to a finding by the commission that the agreed price is
21 reasonable. A price is deemed reasonable if it does not exceed the
22 original cost of plant in service, minus accumulated depreciation,
23 minus contributions in aid to construction. If the unfit wastewater
24 company and the acquiring capable wastewater company are unable to
25 agree on the sale price or the commission finds that the agreed sale
26 price is not reasonable, the acquiring capable wastewater company may
27 institute a condemnation proceeding in superior court in the manner
28 provided by chapter 8.04 RCW to determine the compensation to be paid
29 by the acquiring capable wastewater company for the failed system or
30 systems of sewerage assets.

31 (5) The capable wastewater company acquiring an unfit wastewater
32 company's system or systems shall have the same limited immunity from
33 liability as wastewater companies assuming substandard systems as set
34 forth in RCW 80.28.275.

35 (6) The commission must provide copies of the notice required by
36 subsection (1) of this section to the department of health or the
37 department of ecology, as appropriate to the agencies' jurisdiction,
38 and all proximate public entities providing wastewater utility service.

1 (7) Any capable wastewater company approved by the commission to
2 acquire the system or systems of sewerage of an unfit wastewater
3 company must submit to the commission, for approval, a financial plan,
4 including a timetable, for bringing the acquired system of sewerage
5 assets into compliance with applicable statutory and regulatory
6 standards. The capable wastewater company must also provide a copy of
7 the plan to the department of health or the department of ecology, as
8 appropriate to the agencies' jurisdiction, and other state or local
9 agency as the commission may direct. The commission must give the
10 department of health or the department of ecology, as appropriate to
11 the agencies' jurisdiction, adequate opportunity to comment on the plan
12 and must consider any comments submitted in deciding whether or not to
13 approve the plan.

14 (8) The legislature grants to any private entity the power of
15 eminent domain, for exercise only under the circumstances described in
16 this section, and only to the extent necessary to acquire the
17 wastewater system as described in this section. This subsection does
18 not limit eminent domain authority granted by any other provision of
19 law.

20 NEW SECTION. **Sec. 6.** A new section is added to chapter 80.28 RCW
21 to read as follows:

22 (1) The commission may petition the court pursuant to chapter 7.60
23 RCW to place a wastewater company in receivership. The petition must
24 include the names of one or more qualified candidates for receiver who
25 have consented to assume operation of the system of sewerage. The
26 petition must also include a list of interested and qualified
27 individuals, municipal corporations, and wastewater companies with
28 experience in providing wastewater service and a history of
29 satisfactory operation of a system of sewerage. If no other entity is
30 willing and able to be named as receiver, the court must appoint the
31 county or other municipal corporation whose geographic boundaries
32 include, in whole or in part, the system of sewerage at issue. The
33 municipal corporation may designate one of its agencies or divisions to
34 operate the system, or it may contract with another entity to operate
35 the system. The department of health or department of ecology,
36 whichever has jurisdiction, must provide regulatory oversight for
37 managing the sewerage system.

1 (2) In any petition for receivership under subsection (1) of this
2 section, the commission must recommend the court grant the receiver
3 full authority to act in the best interests of the customers served by
4 the system of sewerage. The receiver must assess the capability, in
5 conjunction with the department of health or ecology, whichever has
6 jurisdiction, and local government, for the system to operate in
7 compliance with health and safety standards, and must report to the
8 court and the commission its recommendations for the company's future
9 operation of the system, including the formation of a water-sewer
10 district or other public entity, or ownership by another existing
11 wastewater company capable of providing service.

12 (3) If a petition for receivership and verifying affidavit executed
13 by an appropriate official allege an immediate and serious danger to
14 residents constituting an emergency, the court must set the matter for
15 hearing within three days and may appoint a temporary receiver ex parte
16 upon the strength of such petition and affidavit pending a full
17 evidentiary hearing, which must be held within fourteen days after
18 receipt of the petition.

19 (4) If the court imposes a bond upon a receiver, the amount must
20 reasonably relate to the level of operating revenue generated by, and
21 the capital value of, the wastewater company. Any receiver appointed
22 pursuant to this section may not be held personally liable for any good
23 faith, reasonable effort to assume possession of, and to operate, the
24 system in compliance with the court's orders, subject to the provisions
25 of law governing clean water as referenced by the commission by rule.

26 (5) The court must authorize the receiver to impose reasonable
27 assessments on the customers of the system of sewerage to recover
28 expenditures for improvements necessary for the public health and
29 safety.

30 (6) The commission must develop a plan for transfer of the system
31 of sewerage to a new operator. The commission must develop the plan
32 after notice to, and an opportunity to participate by, the receiver,
33 the municipal corporations whose geographic boundaries, in whole or in
34 part, include the system of sewerage at issue, and the public. The
35 commission must complete the plan no later than twelve months after
36 appointment of a receiver.

37 (a) If the commission finds that no private entity is able or
38 willing to take over the system of sewerage and decides the system of

1 sewerage should be taken over by a municipal corporation whose
2 geographic boundaries include the system of sewerage at issue, in whole
3 or in part, the commission must issue an order to that effect, and the
4 municipal corporation shall promptly institute negotiations to purchase
5 the system. If within six months of the commission's order the
6 negotiations fail or otherwise do not result in a purchase, the
7 municipal corporation must promptly institute an action in eminent
8 domain to acquire the system. The court must terminate the
9 receivership once the purchase is complete.

10 (b) If the commission decides the system of sewerage should be
11 taken over by a private entity, such as an individual or business, the
12 commission must issue an order to that effect, and that private entity
13 must promptly institute negotiations to purchase the system. If within
14 six months of the commission's order the negotiations fail or otherwise
15 do not result in a purchase, the private entity must promptly exercise
16 the power of eminent domain granted by subsection (9) of this section
17 to acquire the system. The court must terminate the receivership once
18 the purchase is complete.

19 (7) Other than pursuant to subsection (6)(a) and (b) of this
20 section, the court may not terminate the receivership, and order the
21 return of the system to the owners, unless the commission approves that
22 action. The court may impose reasonable conditions upon the return of
23 the system to the owner, including the posting of a bond or other
24 security, routine performance and financial audits, employment of
25 qualified operators and other staff or contracted services, compliance
26 with financial viability requirements, or other measures sufficient to
27 ensure the ongoing proper operation of the system.

28 (8) If, as part of the ultimate disposition of the system, an
29 eminent domain action is commenced to acquire the system of sewerage,
30 the court shall oversee any appraisal of the system conducted under
31 Title 7 RCW to assure that the appraised value properly reflects any
32 reduced value because of the necessity to make improvements to the
33 system. The court must have the authority to approve the appraisal,
34 and to modify it based on any information provided at an evidentiary
35 hearing. The court's determination of the proper value of the system,
36 based on the appraisal, is final, and only appealable if not supported
37 by substantial evidence. If the appraised value is appealed, the court

1 may order that the system's ownership be transferred upon payment of
2 the approved appraised value.

3 (9) The legislature grants any municipal corporation, and any
4 private entity the power of eminent domain, under the circumstances
5 described in this section, and to the extent necessary to acquire the
6 system of sewerage as described in this section. This subsection does
7 not limit eminent domain authority granted by any other provision of
8 law.

9 **Sec. 7.** RCW 80.04.110 and 1995 c 376 s 12 are each amended to read
10 as follows:

11 (1)(a) Complaint may be made by the commission of its own motion or
12 by any person or corporation, chamber of commerce, board of trade, or
13 any commercial, mercantile, agricultural or manufacturing society, or
14 any body politic or municipal corporation, or by the public counsel
15 section of the office of the attorney general, or its successor, by
16 petition or complaint in writing, setting forth any act or thing done
17 or omitted to be done by any public service corporation in violation,
18 or claimed to be in violation, of any provision of (~~law~~) this title,
19 Title 81 RCW, or of any order or rule of the commission(~~(-PROVIDED,~~
20 ~~That))~~).

21 (b) No complaint (~~shall~~) may be entertained by the commission
22 except upon its own motion, as to the reasonableness of the schedule of
23 the rates or charges of any gas company, electrical company, water
24 company, wastewater company, or telecommunications company, unless the
25 same be signed by the mayor, council or commission of the city or town
26 in which the company complained of is engaged in business, or not less
27 than twenty-five consumers or purchasers of such gas, electricity,
28 water, wastewater company services, or telecommunications service, or
29 at least twenty-five percent of the consumers or purchasers of the
30 company's service(~~(-PROVIDED, FURTHER, That))~~).

31 (c) When two or more public service corporations, (meaning to
32 exclude municipal and other public corporations) are engaged in
33 competition in any locality or localities in the state, either may make
34 complaint against the other or others that the rates, charges, rules,
35 regulations or practices of such other or others with or in respect to
36 which the complainant is in competition, are unreasonable,
37 unremunerative, discriminatory, illegal, unfair or intending or tending

1 to oppress the complainant, to stifle competition, or to create or
2 encourage the creation of monopoly, and upon such complaint or upon
3 complaint of the commission upon its own motion, the commission (~~shall~~
4 ~~have~~) has power, after notice and hearing as in other cases, to, by
5 its order, subject to appeal as in other cases, correct the abuse
6 complained of by establishing such uniform rates, charges, rules,
7 regulations or practices in lieu of those complained of, to be observed
8 by all of such competing public service corporations in the locality or
9 localities specified as (~~shall be~~) is found reasonable, remunerative,
10 nondiscriminatory, legal, and fair or tending to prevent oppression or
11 monopoly or to encourage competition, and upon any such hearing it
12 (~~shall be~~) is proper for the commission to take into consideration
13 the rates, charges, rules, regulations and practices of the public
14 service corporation or corporations complained of in any other locality
15 or localities in the state.

16 (2) All matters upon which complaint may be founded may be joined
17 in one hearing, and no motion (~~shall~~) may be entertained against a
18 complaint for misjoinder of complaints or grievances or misjoinder of
19 parties; and in any review of the courts of orders of the commission
20 the same rule shall apply and pertain with regard to the joinder of
21 complaints and parties as herein provided(~~(:—PROVIDED,)~~). However,
22 all grievances to be inquired into (~~shall~~) must be plainly set forth
23 in the complaint. No complaint (~~shall~~) may be dismissed because of
24 the absence of direct damage to the complainant.

25 (3) Upon the filing of a complaint, the commission (~~shall~~) must
26 cause a copy thereof to be served upon the person or corporation
27 complained of, which (~~shall~~) must be accompanied by a notice fixing
28 the time when and place where a hearing will be had upon such
29 complaint. The time fixed for such hearing (~~shall~~) may not be less
30 than ten days after the date of the service of such notice and
31 complaint, excepting as herein provided. The commission (~~shall~~) must
32 enter its final order with respect to a complaint filed by any entity
33 or person other than the commission within ten months from the date of
34 filing of the complaint, unless the date is extended for cause. Rules
35 of practice and procedure not otherwise provided for in this title may
36 be prescribed by the commission. Such rules may include the
37 requirement that a complainant use informal processes before filing a
38 formal complaint.

1 (4)(a) The commission (~~shall~~) may, as appropriate, audit a
2 nonmunicipal water system upon receipt of an administrative order from
3 the department, or the city or county in which the water system is
4 located, finding that the water delivered by a system does not meet
5 state board of health standards adopted under RCW 43.20.050(2)(a) or
6 standards adopted under chapters 70.116 and 70.119A RCW, and the
7 results of the audit (~~shall~~) must be provided to the requesting
8 department, city, or county. However, the number of nonmunicipal water
9 systems referred to the commission in any one calendar year shall not
10 exceed twenty percent of the water companies subject to commission
11 regulation as defined in RCW 80.04.010.

12 (b) Every nonmunicipal water system referred to the commission for
13 audit under this section shall pay to the commission an audit fee in an
14 amount, based on the system's twelve-month audited period, equal to the
15 fee required to be paid by regulated companies under RCW 80.24.010.

16 (5) Any customer or purchaser of service from a water system or
17 company that is subject to commission regulation may file a complaint
18 with the commission if he or she has reason to believe that the water
19 delivered by the system to the customer does not meet state drinking
20 water standards under chapter 43.20 or 70.116 RCW. The commission
21 (~~shall~~) must investigate such a complaint, and (~~shall~~) must request
22 that the state department of health or local health department of the
23 county in which the system is located test the water for compliance
24 with state drinking water standards, and provide the results of such
25 testing to the commission. The commission may decide not to
26 investigate the complaint if it determines that the complaint has been
27 filed in bad faith, or for the purpose of harassment of the water
28 system or company, or for other reasons has no substantial merit. The
29 water system or company (~~shall~~) must bear the expense for the
30 testing. After the commission has received the complaint from the
31 customer and during the pendency of the commission investigation, the
32 water system or company (~~shall~~) may not take any steps to terminate
33 service to the customer or to collect any amounts alleged to be owed to
34 the company by the customer. The commission may issue an order or take
35 any other action to ensure that no such steps are taken by the system
36 or company. The customer may, at the customer's option and expense,
37 obtain a water quality test by a licensed or otherwise qualified water
38 testing laboratory, of the water delivered to the customer by the water

1 system or company, and provide the results of such a test to the
2 commission. If the commission determines that the water does not meet
3 state drinking water standards, it (~~shall~~) must exercise its
4 authority over the system or company as provided in this title, and
5 may, where appropriate, order a refund to the customer on a pro rata
6 basis for the substandard water delivered to the customer, and
7 (~~shall~~) must order reimbursement to the customer for the cost
8 incurred by the customer, if any, in obtaining a water quality test.

9 **Sec. 8.** RCW 80.04.160 and 1961 c 14 s 80.04.160 are each amended
10 to read as follows:

11 The commission is hereby authorized and empowered to adopt,
12 promulgate and issue rules and regulations covering the transmission
13 and delivery of messages and conversations, and the furnishing and
14 supply of gas, electricity, wastewater company services, and water, and
15 any and all services concerning the same, or connected therewith; and
16 generally such rules as pertain to the comfort and convenience of the
17 public concerning the subjects treated of in this title. Such rules
18 and regulations (~~shall~~) must be promulgated and issued by the
19 commission on its own motion, and (~~shall~~) must be served on the
20 public service company affected thereby as other orders of the
21 commission are served. Any public service company affected thereby,
22 and deeming such rules and regulations, or any of them, improper,
23 unjust, unreasonable, or contrary to law, may within twenty days from
24 the date of service of such order upon it file objections thereto with
25 the commission, specifying the particular grounds of such objections.
26 The commission (~~shall~~) must, upon receipt of such objections, fix a
27 time and place for hearing the same, and after a full hearing may make
28 such changes or modifications thereto, if any, as the evidence may
29 justify. The commission (~~shall have~~) has, and it is hereby given,
30 power to adopt rules to govern its proceedings, and to regulate the
31 mode and manner of all investigations and hearings(~~(:—PROVIDED,)~~).
32 However, no person desiring to be present at such hearing (~~shall~~) may
33 be denied permission. Actions may be instituted to review rules and
34 regulations promulgated under this section as in the case of orders of
35 the commission.

1 **Sec. 9.** RCW 80.04.250 and 1991 c 122 s 2 are each amended to read
2 as follows:

3 (1) The commission (~~shall have~~) has power upon complaint or upon
4 its own motion to ascertain and determine the fair value for rate
5 making purposes of the property of any public service company used and
6 useful for service in this state and (~~shall~~) must exercise such power
7 whenever it shall deem such valuation or determination necessary or
8 proper under any of the provisions of this title. In determining what
9 property is used and useful for providing electric, gas, wastewater
10 company services, or water service, the commission may include the
11 reasonable costs of construction work in progress to the extent that
12 the commission finds that inclusion is in the public interest.

13 (2) The commission (~~shall have~~) has the power to make
14 revaluations of the property of any public service company from time to
15 time.

16 (3) The commission (~~shall~~) must, before any hearing is had,
17 notify the complainants and the public service company concerned of the
18 time and place of such hearing by giving at least thirty days' written
19 notice thereof, specifying that at the time and place designated a
20 hearing will be held for the purpose of ascertaining the value of the
21 company's property, used and useful as aforesaid, which notice
22 (~~shall~~) must be sufficient to authorize the commission to inquire
23 into and pass upon the matters designated in this section.

24 **Sec. 10.** RCW 80.04.500 and 1985 c 450 s 13 are each amended to
25 read as follows:

26 Nothing in this title (~~shall~~) authorizes the commission to make
27 or enforce any order affecting rates, tolls, rentals, contracts or
28 charges or service rendered, or the adequacy or sufficiency of the
29 facilities, equipment, instrumentalities or buildings, or the
30 reasonableness of rules or regulations made, furnished, used, supplied
31 or in force affecting any telecommunications line, gas plant,
32 electrical plant, system of sewerage, or water system owned and
33 operated by any city or town, or to make or enforce any order relating
34 to the safety of any telecommunications line, electrical plant, system
35 of sewerage, or water system owned and operated by any city or town,
36 but all other provisions enumerated herein (~~shall~~) apply to public
37 utilities owned by any city or town.

1 **Sec. 11.** RCW 80.28.010 and 2008 c 299 s 35 are each amended to
2 read as follows:

3 (1) All charges made, demanded or received by any gas company,
4 electrical company, wastewater company, or water company for gas,
5 electricity or water, or for any service rendered or to be rendered in
6 connection therewith, shall be just, fair, reasonable and sufficient.
7 Reasonable charges necessary to cover the cost of administering the
8 collection of voluntary donations for the purposes of supporting the
9 development and implementation of evergreen community management plans
10 and ordinances under RCW 80.28.300 (~~shall~~) must be deemed as prudent
11 and necessary for the operation of a utility.

12 (2) Every gas company, electrical company, wastewater company, and
13 water company (~~shall~~) must furnish and supply such service,
14 instrumentalities and facilities as shall be safe, adequate and
15 efficient, and in all respects just and reasonable.

16 (3) All rules and regulations issued by any gas company, electrical
17 company, wastewater company, or water company, affecting or pertaining
18 to the sale or distribution of its product or service, (~~shall~~) must
19 be just and reasonable.

20 (4) Utility service for residential space heating shall not be
21 terminated between November 15 through March 15 if the customer:

22 (a) Notifies the utility of the inability to pay the bill,
23 including a security deposit. This notice should be provided within
24 five business days of receiving a payment overdue notice unless there
25 are extenuating circumstances. If the customer fails to notify the
26 utility within five business days and service is terminated, the
27 customer can, by paying reconnection charges, if any, and fulfilling
28 the requirements of this section, receive the protections of this
29 chapter;

30 (b) Provides self-certification of household income for the prior
31 twelve months to a grantee of the department of (~~community, trade, and~~
32 ~~economic development~~) commerce, which administers federally funded
33 energy assistance programs. The grantee (~~shall~~) must determine that
34 the household income does not exceed the maximum allowed for
35 eligibility under the state's plan for low-income energy assistance
36 under 42 U.S.C. 8624 and (~~shall~~) must provide a dollar figure that is
37 seven percent of household income. The grantee may verify information
38 provided in the self-certification;

1 (c) Has applied for home heating assistance from applicable
2 government and private sector organizations and certifies that any
3 assistance received will be applied to the current bill and future
4 utility bills;

5 (d) Has applied for low-income weatherization assistance to the
6 utility or other appropriate agency if such assistance is available for
7 the dwelling;

8 (e) Agrees to a payment plan and agrees to maintain the payment
9 plan. The plan will be designed both to pay the past due bill by the
10 following October 15th and to pay for continued utility service. If
11 the past due bill is not paid by the following October 15, the customer
12 (~~shall~~) is not (~~be~~) eligible for protections under this chapter
13 until the past due bill is paid. The plan (~~shall~~) may not require
14 monthly payments in excess of seven percent of the customer's monthly
15 income plus one-twelfth of any arrearage accrued from the date
16 application is made and thereafter during November 15 through March 15.
17 A customer may agree to pay a higher percentage during this period, but
18 shall not be in default unless payment during this period is less than
19 seven percent of monthly income plus one-twelfth of any arrearage
20 accrued from the date application is made and thereafter. If
21 assistance payments are received by the customer subsequent to
22 implementation of the plan, the customer (~~shall~~) must contact the
23 utility to reformulate the plan; and

24 (f) Agrees to pay the moneys owed even if he or she moves.

25 (5) The utility shall:

26 (a) Include in any notice that an account is delinquent and that
27 service may be subject to termination, a description of the customer's
28 duties in this section;

29 (b) Assist the customer in fulfilling the requirements under this
30 section;

31 (c) Be authorized to transfer an account to a new residence when a
32 customer who has established a plan under this section moves from one
33 residence to another within the same utility service area;

34 (d) Be permitted to disconnect service if the customer fails to
35 honor the payment program. Utilities may continue to disconnect
36 service for those practices authorized by law other than for nonpayment
37 as provided for in this subsection. Customers who qualify for payment
38 plans under this section who default on their payment plans and are

1 disconnected can be reconnected and maintain the protections afforded
2 under this chapter by paying reconnection charges, if any, and by
3 paying all amounts that would have been due and owing under the terms
4 of the applicable payment plan, absent default, on the date on which
5 service is reconnected; and

6 (e) Advise the customer in writing at the time it disconnects
7 service that it will restore service if the customer contacts the
8 utility and fulfills the other requirements of this section.

9 (6) A payment plan implemented under this section is consistent
10 with RCW 80.28.080.

11 (7) Every gas company and electrical company shall offer
12 residential customers the option of a budget billing or equal payment
13 plan. The budget billing or equal payment plan shall be offered low-
14 income customers eligible under the state's plan for low-income energy
15 assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without
16 limiting availability to certain months of the year, without regard to
17 the length of time the customer has occupied the premises, and without
18 regard to whether the customer is the tenant or owner of the premises
19 occupied.

20 (8) Every gas company, electrical company, wastewater company, and
21 water company (~~shall~~) must construct and maintain such facilities in
22 connection with the manufacture and distribution of its product, or
23 provision of its services, as will be efficient and safe to its
24 employees and the public.

25 (9) An agreement between the customer and the utility, whether oral
26 or written, (~~shall~~) does not waive the protections afforded under
27 this chapter.

28 (10) In establishing rates or charges for water service, water
29 companies as defined in RCW 80.04.010 may consider the achievement of
30 water conservation goals and the discouragement of wasteful water use
31 practices.

32 **Sec. 12.** RCW 80.28.020 and 1961 c 14 s 80.28.020 are each amended
33 to read as follows:

34 Whenever the commission shall find, after a hearing had upon its
35 own motion, or upon complaint, that the rates or charges demanded,
36 exacted, charged or collected by any gas company, electrical company,
37 wastewater company, or water company, for gas, electricity, wastewater

1 company services, or water, or in connection therewith, or that the
2 rules, regulations, practices or contracts affecting such rates or
3 charges are unjust, unreasonable, unjustly discriminatory or unduly
4 preferential, or in any wise in violation of the provisions of the law,
5 or that such rates or charges are insufficient to yield a reasonable
6 compensation for the service rendered, the commission (~~shall~~) must
7 determine the just, reasonable, or sufficient rates, charges,
8 regulations, practices or contracts to be thereafter observed and in
9 force, and (~~shall~~) must fix the same by order.

10 **Sec. 13.** RCW 80.28.030 and 1989 c 207 s 4 are each amended to read
11 as follows:

12 (1) Whenever the commission (~~shall~~) finds, after such hearing,
13 that the illuminating or heating power, purity or pressure of gas, the
14 efficiency of electric lamp supply, the voltage of the current supplied
15 for light, heat or power, the quality of wastewater company services,
16 or the purity, quality, volume, and pressure of water, supplied by any
17 gas company, electrical company, wastewater company, or water company,
18 as the case may be, is insufficient, impure, inadequate or inefficient,
19 it (~~shall~~) must order such improvement in the manufacture,
20 distribution or supply of gas, in the manufacture, transmission or
21 supply of electricity, in the operation of the services and facilities
22 of wastewater companies, or in the storage, distribution or supply of
23 water, or in the methods employed by such gas company, electrical
24 company, wastewater company, or water company, as will in its judgment
25 be efficient, adequate, just and reasonable. Failure of a water
26 company to comply with state board of health standards adopted under
27 RCW 43.20.050(2)(a) or department standards adopted under chapter
28 70.116 RCW for purity, volume, and pressure (~~shall be~~) is prima facie
29 evidence that the water supplied is insufficient, impure, inadequate,
30 or inefficient. Failure of a wastewater company to comply with
31 standards and permit conditions adopted and implemented under chapter
32 70.118B or 90.48 RCW for treatment and disposal of sewage, is prima
33 facie evidence that the system of sewerage is insufficient, inadequate,
34 or inefficient.

35 (2) In ordering improvements in the storage, distribution, or
36 supply of water, the commission (~~shall~~) must consult and coordinate
37 with the department of health. In the event that a water company fails

1 to comply with an order of the commission (~~in a timely fashion~~)
2 within the deadline specified in the order, the commission may request
3 that the department petition the superior court of Thurston county to
4 place the company in receivership pursuant to chapter 7.60 RCW.

5 (3) In ordering improvements to the system of sewerage, the
6 commission must consult and coordinate with the department of health or
7 the department of ecology, as appropriate to the agencies'
8 jurisdiction. In the event that a wastewater company fails to comply
9 with an order of the commission within the deadline specified in the
10 order, the commission may petition the superior court of Thurston
11 county to place the company in receivership pursuant to chapter 7.60
12 RCW.

13 **Sec. 14.** RCW 80.28.040 and 1989 c 207 s 5 are each amended to read
14 as follows:

15 (1) Whenever the commission (~~shall~~) finds, after hearing, that
16 any rules, regulations, measurements or the standard thereof,
17 practices, acts or services of any such gas company, electrical
18 company, wastewater company, or water company are unjust, unreasonable,
19 improper, insufficient, inefficient or inadequate, or that any service
20 which may be reasonably demanded is not furnished, the commission
21 (~~shall~~) must fix the reasonable rules, regulations, measurements or
22 the standard thereof, practices, acts or service to be thereafter
23 furnished, imposed, observed and followed, and (~~shall~~) must fix the
24 same by order or rule.

25 (2) In ordering improvements to the service of any water company,
26 the commission (~~shall~~) must consult and coordinate with the
27 department of health. In the event that a water company fails to
28 comply with an order of the commission within the deadline specified in
29 the order, the commission may request that the department petition the
30 superior court of Thurston county to place the company in receivership
31 pursuant to chapter 7.60 RCW.

32 (3) In ordering improvements to the service of any system of
33 sewerage, the commission must consult and coordinate with the
34 department of health or the department of ecology, as appropriate to
35 the agencies' jurisdiction. In the event that a wastewater company
36 fails to comply with an order of the commission within the deadline

1 specified in the order, the commission may petition the superior court
2 of Thurston county to place the company in receivership pursuant to
3 chapter 7.60 RCW.

4 **Sec. 15.** RCW 80.28.050 and 1961 c 14 s 80.28.050 are each amended
5 to read as follows:

6 Every gas company, electrical company, wastewater company, and
7 water company (~~shall~~) must file with the commission and (~~shall~~)
8 must print and keep open to public inspection schedules in such form as
9 the commission may prescribe, showing all rates and charges made,
10 established or enforced, or to be charged or enforced, all forms of
11 contract or agreement, all rules and regulations relating to rates,
12 charges or service, used or to be used, and all general privileges and
13 facilities granted or allowed by such gas company, electrical company,
14 wastewater company, or water company.

15 **Sec. 16.** RCW 80.28.060 and 2008 c 181 s 402 are each amended to
16 read as follows:

17 (1) Unless the commission otherwise orders, no change (~~shall~~) may
18 be made in any rate or charge or in any form of contract or agreement
19 or in any rule or regulation relating to any rate, charge or service,
20 or in any general privilege or facility which shall have been filed and
21 published by a gas company, electrical company, wastewater company, or
22 water company in compliance with the requirements of RCW 80.28.050
23 except after thirty days' notice to the commission and publication for
24 thirty days, which notice (~~shall~~) must plainly state the changes
25 proposed to be made in the schedule then in force and the time when the
26 change will go into effect and all proposed changes (~~shall~~) must be
27 shown by printing, filing and publishing new schedules, or shall be
28 plainly indicated upon the schedules in force at the time and kept open
29 to public inspection. Proposed changes may be suspended by the
30 commission within thirty days or before the stated effective date of
31 the proposed change, whichever is later. The commission, for good
32 cause shown, may allow changes without requiring the thirty days'
33 notice by duly filing, in such manner as it may direct, an order
34 specifying the changes so to be made and the time when it (~~shall~~)
35 takes effect. All such changes (~~shall~~) must be immediately indicated
36 upon its schedules by the company affected. When any change is made in

1 any rate or charge, form of contract or agreement, or any rule or
2 regulation relating to any rate or charge or service, or in any general
3 privilege or facility, the effect of which is to increase any rate or
4 charge, then in existence, attention (~~shall~~) must be directed on the
5 copy filed with the commission to such increase by some character
6 immediately preceding or following the item in such schedule, such
7 character to be in form as designated by the commission.

8 (2) During a state of emergency declared under RCW 43.06.010(12),
9 the governor may waive or suspend the operation or enforcement of this
10 section or any portion of this section or under any administrative
11 rule, and issue any orders to facilitate the operation of state or
12 local government or to promote and secure the safety and protection of
13 the civilian population.

14 **Sec. 17.** RCW 80.28.080 and 1985 c 427 s 2 are each amended to read
15 as follows:

16 (1)(a) Except as provided otherwise in this subsection, no gas
17 company, electrical company, wastewater company, or water company
18 (~~shall~~) may charge, demand, collect or receive a greater or less or
19 different compensation for any service rendered or to be rendered than
20 the rates and charges applicable to such service as specified in its
21 schedule filed and in effect at the time, nor (~~shall~~) may any such
22 company directly or indirectly refund or remit in any manner or by any
23 device any portion of the rates or charges so specified, or furnish its
24 product at free or reduced rates except to its employees and their
25 families, and its officers, attorneys, and agents; to hospitals,
26 charitable and eleemosynary institutions and persons engaged in
27 charitable and eleemosynary work; to indigent and destitute persons; to
28 national homes or state homes for disabled volunteer soldiers and
29 soldiers' and sailors' homes(~~(~~PROVIDED, That the term~~)~~).

30 For the purposes of this subsection (1):

31 (i) "Employees" (~~as used in this paragraph shall~~) includes
32 furloughed, pensioned and superannuated employees, persons who have
33 become disabled or infirm in the service of any such company; and (~~the~~
34 ~~term~~)

35 (ii) "Families(~~(~~τ~~)~~)" (~~as used in this paragraph, shall~~) includes
36 the families of those persons named in this proviso, the families of
37 persons killed or dying in the service, also the families of persons

1 killed, and the surviving spouse prior to remarriage, and the minor
2 children during minority of persons who died while in the service of
3 any of the companies named in this (~~paragraph:—PROVIDED FURTHER,~~
4 ~~That~~) subsection (1).

5 (b) Water companies may furnish free or at reduced rates water for
6 the use of the state, or for any project in which the state is
7 interested(~~(:—AND PROVIDED FURTHER, That)~~).

8 (c) Gas companies, electrical companies, wastewater companies, and
9 water companies may charge the defendant for treble damages awarded in
10 lawsuits successfully litigated under RCW 80.28.240.

11 (2) No gas company, electrical company, wastewater company, or
12 water company (~~shall~~) may extend to any person or corporation any
13 form of contract or agreement or any rule or regulation or any
14 privilege or facility except such as are regularly and uniformly
15 extended to all persons and corporations under like circumstances.

16 **Sec. 18.** RCW 80.28.090 and 1961 c 14 s 80.28.090 are each amended
17 to read as follows:

18 No gas company, electrical company, wastewater company, or water
19 company (~~shall~~) may make or grant any undue or unreasonable
20 preference or advantage to any person, corporation, or locality, or to
21 any particular description of service in any respect whatsoever, or
22 subject any particular person, corporation or locality or any
23 particular description of service to any undue or unreasonable
24 prejudice or disadvantage in any respect whatsoever.

25 **Sec. 19.** RCW 80.28.100 and 1961 c 14 s 80.28.100 are each amended
26 to read as follows:

27 No gas company, electrical company, wastewater company, or water
28 company (~~shall~~) may, directly or indirectly, or by any special rate,
29 rebate, drawback or other device or method, charge, demand, collect or
30 receive from any person or corporation a greater or less compensation
31 for gas, electricity, wastewater company services, or water, or for any
32 service rendered or to be rendered, or in connection therewith, except
33 as authorized in this chapter, than it charges, demands, collects or
34 receives from any other person or corporation for doing a like or
35 contemporaneous service with respect thereto under the same or
36 substantially similar circumstances or conditions.

1 **Sec. 20.** RCW 80.28.110 and 1990 c 132 s 5 are each amended to read
2 as follows:

3 Every gas company, electrical company, wastewater company, or water
4 company, engaged in the sale and distribution of gas, electricity or
5 water or the provision of wastewater company services, (~~shall~~) must,
6 upon reasonable notice, furnish to all persons and corporations who may
7 apply therefor and be reasonably entitled thereto, suitable facilities
8 for furnishing and furnish all available gas, electricity, wastewater
9 company services, and water as demanded, except that a water company
10 (~~shall~~) may not furnish water contrary to the provisions of water
11 system plans approved under chapter 43.20 or 70.116 RCW and wastewater
12 companies may not provide services contrary to the approved general
13 sewer plan.

14 **Sec. 21.** RCW 80.28.120 and 1961 c 14 s 80.28.120 are each amended
15 to read as follows:

16 Every gas, water, wastewater, or electrical company owning,
17 operating or managing a plant or system for the distribution and sale
18 of gas, water or electricity, or the provision of wastewater company
19 services to the public for hire (~~shall be~~) is, and (~~be~~) is held to
20 be a public service company as to such plant or system and as to all
21 gas, water, wastewater company services, or electricity distributed or
22 furnished therefrom, whether such gas, water, wastewater company
23 services, or electricity be sold wholesale or retail or be distributed
24 wholly to the general public or in part as surplus gas, water,
25 wastewater company services, or electricity to manufacturing or
26 industrial concerns or to other public service companies or
27 municipalities for redistribution. Nothing in this title (~~shall~~) may
28 be construed to prevent any gas company, electrical company or water
29 company from continuing to furnish its product or the use of its lines,
30 equipment or service under any contract or contracts in force on June
31 7, 1911, at the rates fixed in such contract or contracts (~~PROVIDED,~~
32 ~~That~~). However, the commission (~~shall have~~) has power, in its
33 discretion, to direct by order that such contract or contracts
34 (~~shall~~) be terminated by the company party thereto and thereupon such
35 contract or contracts (~~shall~~) must be terminated by such company as
36 and when directed by such order.

1 **Sec. 22.** RCW 80.28.130 and 1961 c 14 s 80.28.130 are each amended
2 to read as follows:

3 Whenever the commission (~~shall~~) finds, after hearing had upon its
4 own motion or upon complaint, that repairs or improvements, to, or
5 changes in, any gas plant, electrical plant, system of sewerage, or
6 water system ought to be made, or that any additions or extensions
7 should reasonably be made thereto, in order to promote the security or
8 convenience of the public or employees, or in order to secure adequate
9 service or facilities for manufacturing, distributing or supplying gas,
10 electricity, wastewater company services, or water, the commission may
11 enter an order directing that such reasonable repairs, improvements,
12 changes, additions or extensions of such gas plant, electrical plant,
13 system of sewerage, or water system be made.

14 **Sec. 23.** RCW 80.28.185 and 1989 c 207 s 6 are each amended to read
15 as follows:

16 The commission may develop and enter into an agreement with a
17 county to carry out the regulatory functions of this chapter with
18 regard to water companies or wastewater companies located within the
19 boundary of that county. The duration of the agreement, the duties to
20 be performed, and the remuneration to be paid by the commission are
21 subject to agreement by the commission and the county.

22 **Sec. 24.** RCW 80.28.240 and 1989 c 11 s 30 are each amended to read
23 as follows:

24 (1) A utility may bring a civil action for damages against any
25 person who commits, authorizes, solicits, aids, abets, or attempts to:

26 (a) Divert, or cause to be diverted, utility services by any means
27 whatsoever;

28 (b) Make, or cause to be made, any connection or reconnection with
29 property owned or used by the utility to provide utility service
30 without the authorization or consent of the utility;

31 (c) Prevent any utility meter or other device used in determining
32 the charge for utility services from accurately performing its
33 measuring function by tampering or by any other means;

34 (d) Tamper with any property owned or used by the utility to
35 provide utility services; or

1 (e) Use or receive the direct benefit of all or a portion of the
2 utility service with knowledge of, or reason to believe that, the
3 diversion, tampering, or unauthorized connection existed at the time of
4 the use or that the use or receipt was without the authorization or
5 consent of the utility.

6 (2) In any civil action brought under this section, the utility may
7 recover from the defendant as damages three times the amount of actual
8 damages, if any, plus the cost of the suit and reasonable attorney's
9 fees, plus the costs incurred on account of the bypassing, tampering,
10 or unauthorized reconnection, including but not limited to costs and
11 expenses for investigation, disconnection, reconnection, service calls,
12 and expert witnesses.

13 (3) Any damages recovered under this section in excess of the
14 actual damages sustained by the utility may be taken into account by
15 the utilities and transportation commission or other applicable rate-
16 making agency in establishing utility rates.

17 (4) As used in this section:

18 (a) "Customer" means the person in whose name a utility service is
19 provided;

20 (b) "Divert" means to change the intended course or path of
21 electricity, gas, or water without the authorization or consent of the
22 utility;

23 (c) "Person" means any individual, partnership, firm, association,
24 or corporation or government agency;

25 (d) "Reconnection" means the commencement of utility service to a
26 customer or other person after service has been lawfully disconnected
27 by the utility;

28 (e) "Tamper" means to rearrange, injure, alter, interfere with, or
29 otherwise prevent from performing the normal or customary function;

30 (f) "Utility" means any electrical company, gas company, wastewater
31 company, or water company as those terms are defined in RCW 80.04.010,
32 and includes any electrical, gas, system of sewerage, or water system
33 operated by any public agency; and

34 (g) "Utility service" means the provision of electricity, gas,
35 water, wastewater company services, or any other service or commodity
36 furnished by the utility for compensation.

1 **Sec. 25.** RCW 80.28.270 and 1991 c 101 s 2 are each amended to read
2 as follows:

3 The commission's jurisdiction over the rates, charges, practices,
4 acts or services of any water company (~~shall~~) or wastewater company
5 include any aspect of line extension, service installation, or service
6 connection. If the charges for such services are not set forth by
7 specific amount in the company's tariff filed with the commission
8 pursuant to RCW 80.28.050, the commission (~~shall~~) must determine the
9 fair, just, reasonable, and sufficient charge for such extension,
10 installation, or connection. In any such proceeding in which there is
11 no specified tariffed rate, the burden (~~shall be~~) is on the company
12 to prove that its proposed charges are fair, just, reasonable, and
13 sufficient.

14 **Sec. 26.** RCW 80.28.275 and 1994 c 292 s 9 are each amended to read
15 as follows:

16 A water company or a wastewater company assuming responsibility for
17 a water system or system of sewerage that is not in compliance with
18 state or federal requirements (~~for public drinking water systems~~),
19 and its agents and employees, are immune from lawsuits or causes of
20 action, based on noncompliance with state or federal requirements (~~for~~
21 ~~public drinking water systems~~), which predate the date of assuming
22 responsibility and continue after the date of assuming responsibility,
23 provided that the water company or wastewater company has submitted and
24 is complying with a plan and schedule of improvements approved by the
25 department of health or the department of ecology, as appropriate to
26 the agencies' jurisdiction. This immunity (~~shall~~) expires on the
27 earlier of the date the plan of improvements is completed or four years
28 from the date of assuming responsibility. This immunity does not apply
29 to intentional injuries, fraud, or bad faith and is subject to the
30 provisions of federal law governing clean water as referenced by the
31 commission by rule.

32 **Sec. 27.** RCW 7.60.025 and 2010 c 212 s 4 are each amended to read
33 as follows:

34 (1) A receiver may be appointed by the superior court of this state
35 in the following instances, but except in any case in which a
36 receiver's appointment is expressly required by statute, or any case in

1 which a receiver's appointment is sought by a state agent whose
2 authority to seek the appointment of a receiver is expressly conferred
3 by statute, or any case in which a receiver's appointment with respect
4 to real property is sought under (b)(ii) of this subsection, a receiver
5 shall be appointed only if the court additionally determines that the
6 appointment of a receiver is reasonably necessary and that other
7 available remedies either are not available or are inadequate:

8 (a) On application of any party, when the party is determined to
9 have a probable right to or interest in property that is a subject of
10 the action and in the possession of an adverse party, or when the
11 property or its revenue-producing potential is in danger of being lost
12 or materially injured or impaired. A receiver may be appointed under
13 this subsection (1)(a) whether or not the application for appointment
14 of a receiver is combined with, or is ancillary to, an action seeking
15 a money judgment or other relief;

16 (b) Provisionally, during the pendency of any action to foreclose
17 upon any lien against or for forfeiture of any interest in real or
18 personal property, or after notice of a trustee's sale has been given
19 under RCW 61.24.040, or after notice of forfeiture has been given under
20 RCW 61.30.040, on application of any person, when the interest in the
21 property that is the subject of foreclosure or forfeiture of the person
22 seeking the receiver's appointment is determined to be probable and
23 either:

24 (i) The property or its revenue-producing potential is in danger of
25 being lost or materially injured or impaired; or

26 (ii) The appointment of a receiver with respect to the real or
27 personal property that is the subject of the action, the notice of
28 trustee's sale or notice of forfeiture is provided for by agreement or
29 is reasonably necessary to effectuate or enforce an assignment of rents
30 or other revenues from the property;

31 (c) After judgment, in order to give effect to the judgment;

32 (d) To dispose of property according to provisions of a judgment
33 dealing with its disposition;

34 (e) To the extent that property is not exempt from execution, at
35 the instance of a judgment creditor either before or after the issuance
36 of any execution, to preserve or protect it, or prevent its transfer;

37 (f) If and to the extent that property is subject to execution to
38 satisfy a judgment, to preserve the property during the pendency of an

1 appeal, or when an execution has been returned unsatisfied, or when an
2 order requiring a judgment debtor to appear for proceedings
3 supplemental to judgment has been issued and the judgment debtor fails
4 to submit to examination as ordered;

5 (g) Upon an attachment of real or personal property when the
6 property attached is of a perishable nature or is otherwise in danger
7 of waste, impairment, or destruction, or where the abandoned property's
8 owner has absconded with, secreted, or abandoned the property, and it
9 is necessary to collect, conserve, manage, control, or protect it, or
10 to dispose of it promptly, or when the court determines that the nature
11 of the property or the exigency of the case otherwise provides cause
12 for the appointment of a receiver;

13 (h) In an action by a transferor of real or personal property to
14 avoid or rescind the transfer on the basis of fraud, or in an action to
15 subject property or a fund to the payment of a debt;

16 (i) In an action against any person who is not an individual if the
17 object of the action is the dissolution of that person, or if that
18 person has been dissolved, or if that person is insolvent or is not
19 generally paying the person's debts as those debts become due unless
20 they are the subject of bona fide dispute, or if that person is in
21 imminent danger of insolvency;

22 (j) In accordance with RCW 7.08.030 (4) and (6), in cases in which
23 a general assignment for the benefit of creditors has been made;

24 (k) In quo warranto proceedings under chapter 7.56 RCW;

25 (l) As provided under RCW 11.64.022;

26 (m) In an action by the department of licensing under RCW
27 18.35.220(3) with respect to persons engaged in the business of
28 dispensing of hearing aids, RCW 18.85.430 in the case of persons
29 engaged in the business of a real estate broker, associate real estate
30 broker, or real estate salesperson, or RCW 19.105.470 with respect to
31 persons engaged in the business of camping resorts;

32 (n) In an action under RCW 18.44.470 or 18.44.490 in the case of
33 persons engaged in the business of escrow agents;

34 (o) Upon a petition with respect to a nursing home in accordance
35 with and subject to receivership provisions under chapter 18.51 RCW;

36 (p) Under RCW 19.40.071(3), in connection with a proceeding for
37 relief with respect to a transfer fraudulent as to a creditor or
38 creditors;

1 (q) Under RCW 19.100.210(1), in an action by the attorney general
2 or director of financial institutions to restrain any actual or
3 threatened violation of the franchise investment protection act;

4 (r) In an action by the attorney general or by a prosecuting
5 attorney under RCW 19.110.160 with respect to a seller of business
6 opportunities;

7 (s) In an action by the director of financial institutions under
8 RCW 21.20.390 in cases involving actual or threatened violations of the
9 securities act of Washington or under RCW 21.30.120 in cases involving
10 actual or threatened violations of chapter 21.30 RCW with respect to
11 certain businesses and transactions involving commodities;

12 (t) In an action for or relating to dissolution of a business
13 corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or
14 23B.14.320, for dissolution of a nonprofit corporation under RCW
15 24.03.271, for dissolution of a mutual corporation under RCW 24.06.305,
16 or in any other action for the dissolution or winding up of any other
17 entity provided for by Title 23, 23B, 24, or 25 RCW;

18 (u) In any action in which the dissolution of any public or private
19 entity is sought, in any action involving any dispute with respect to
20 the ownership or governance of such an entity, or upon the application
21 of a person having an interest in such an entity when the appointment
22 is reasonably necessary to protect the property of the entity or its
23 business or other interests;

24 (v) Under RCW 25.05.215, in aid of a charging order with respect to
25 a partner's interest in a partnership;

26 (w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030,
27 in the case of a bank or trust company or, under and subject to RCW
28 32.24.070 through 32.24.090, in the case of a mutual savings bank;

29 (x) Under and subject to RCW 31.12.637 and 31.12.671 through
30 31.12.724, in the case of credit unions;

31 (y) Upon the application of the director of financial institutions
32 under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable
33 to agricultural lenders, under RCW 31.40.120 in actions to enforce
34 chapter 31.40 RCW applicable to entities engaged in federally
35 guaranteed small business loans, under RCW 31.45.160 in actions to
36 enforce chapter 31.45 RCW applicable to persons licensed as check
37 cashers or check sellers, or under RCW 19.230.230 in actions to enforce

1 chapter 19.230 RCW applicable to persons licensed under the uniform
2 money services act;

3 (z) Under RCW 35.82.090 or 35.82.180, with respect to a housing
4 project;

5 (aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce
6 rights under any revenue bonds issued for the purpose of financing
7 industrial development facilities or bonds of the Washington state
8 housing finance commission, or any financing document securing any such
9 bonds;

10 (bb) Under and subject to RCW 43.70.195, in an action by the
11 secretary of health or by a local health officer with respect to a
12 public water system;

13 (cc) As contemplated by RCW 61.24.030, with respect to real
14 property that is the subject of nonjudicial foreclosure proceedings
15 under chapter 61.24 RCW;

16 (dd) As contemplated by RCW 61.30.030(3), with respect to real
17 property that is the subject of judicial or nonjudicial forfeiture
18 proceedings under chapter 61.30 RCW;

19 (ee) Under RCW 64.32.200(2), in an action to foreclose upon a lien
20 for common expenses against a dwelling unit subject to the horizontal
21 property regimes act, chapter 64.32 RCW;

22 (ff) Under RCW 64.34.364(10), in an action by a unit owners'
23 association to foreclose a lien for nonpayment of delinquent
24 assessments against condominium units;

25 (gg) Upon application of the attorney general under RCW
26 64.36.220(3), in aid of any writ or order restraining or enjoining
27 violations of chapter 64.36 RCW applicable to timeshares;

28 (hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment
29 or performance of municipal bonds issued with respect to facilities
30 used to abate, control, or prevent pollution;

31 (ii) Upon the application of the department of social and health
32 services under RCW 74.42.580, in cases involving nursing homes;

33 (jj) Upon the application of the utilities and transportation
34 commission under RCW 80.28.040, with respect to a water company or
35 wastewater company that has failed to comply with an order of such
36 commission within the time deadline specified therein;

37 (kk) Under RCW 87.56.065, in connection with the dissolution of an
38 irrigation district;

1 (ll) Upon application of the attorney general or the department of
2 licensing, in any proceeding that either of them are authorized by
3 statute to bring to enforce Title 18 or 19 RCW; the securities act of
4 Washington, chapter 21.20 RCW; the Washington commodities act, chapter
5 21.30 RCW; the land development act, chapter 58.19 RCW; or under
6 chapter 64.36 RCW relating to the regulation of timeshares;

7 (mm) Upon application of the director of financial institutions in
8 any proceeding that the director of financial institutions is
9 authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

10 (nn) In such other cases as may be provided for by law, or when, in
11 the discretion of the court, it may be necessary to secure ample
12 justice to the parties.

13 (2) The superior courts of this state shall appoint as receiver of
14 property located in this state a person who has been appointed by a
15 federal or state court located elsewhere as receiver with respect to
16 the property specifically or with respect to the owner's property
17 generally, upon the application of the person or of any party to that
18 foreign proceeding, and following the appointment shall give effect to
19 orders, judgments, and decrees of the foreign court affecting the
20 property in this state held by the receiver, unless the court
21 determines that to do so would be manifestly unjust or inequitable.
22 The venue of such a proceeding may be any county in which the person
23 resides or maintains any office, or any county in which any property
24 over which the receiver is to be appointed is located at the time the
25 proceeding is commenced.

26 (3) At least seven days' notice of any application for the
27 appointment of a receiver (~~shall~~) must be given to the owner of
28 property to be subject thereto and to all other parties in the action,
29 and to other parties in interest as the court may require. If any
30 execution by a judgment creditor under Title 6 RCW or any application
31 by a judgment creditor for the appointment of a receiver, with respect
32 to property over which the receiver's appointment is sought, is pending
33 in any other action at the time the application is made, then notice of
34 the application for the receiver's appointment also (~~shall~~) must be
35 given to the judgment creditor in the other action. The court may
36 shorten or expand the period for notice of an application for the
37 appointment of a receiver upon good cause shown.

1 (4) The order appointing a receiver in all cases (~~shall~~) must
2 reasonably describe the property over which the receiver is to take
3 charge, by category, individual items, or both if the receiver is to
4 take charge of less than all of the owner's property. If the order
5 appointing a receiver does not expressly limit the receiver's authority
6 to designated property or categories of property of the owner, the
7 receiver is a general receiver with the authority to take charge over
8 all of the owner's property, wherever located.

9 (5) The court may condition the appointment of a receiver upon the
10 giving of security by the person seeking the receiver's appointment, in
11 such amount as the court may specify, for the payment of costs and
12 damages incurred or suffered by any person should it later be
13 determined that the appointment of the receiver was wrongfully
14 obtained.

15 **Sec. 28.** RCW 36.94.110 and 1967 c 72 s 11 are each amended to read
16 as follows:

17 After adoption of the sewerage and/or water general plan, all
18 municipal corporations and private utilities within the plan area
19 (~~shall~~) must abide by and adhere to the plan for the future
20 development of their systems. A municipal corporation or private
21 utility, including a wastewater company as defined in RCW 80.04.010,
22 may petition for amendments to the plan. Whenever the governing
23 authority of any county or counties or any municipal corporation deems
24 it to be for the public interest to amend the sewerage and/or water
25 general plan for such county or counties, notice shall be filed with
26 the board or boards of county commissioners. Upon such notice, the
27 board or boards (~~shall~~) must initiate consideration of any amendment
28 requested relating to the plan and proceed as provided in this chapter
29 for the adoption of an original plan.

30 NEW SECTION. **Sec. 29.** (1) The commission is authorized to adopt
31 rules, including establishing the methodologies and procedures for
32 developing, assessing, and collecting fees, to implement this act
33 before July 1, 2012, to ensure that this act is implemented on its
34 effective date.

35 (2) The commission is authorized to collect payments from
36 wastewater companies and other private entities that have notified the

1 commission of their willingness to cover the costs of the rule making.
2 The commission must issue a notice of intent to adopt rules, which will
3 include a request that wastewater companies or other private entities
4 notify the commission of their intent to participate in the cost
5 recovery mechanism. Upon receipt of the statements of intent to
6 participate in the cost recovery mechanism, the commission must
7 proportionately divide among the companies or private entities the
8 anticipated cost of the rule making and send the parties an invoice.
9 Upon receipt of sufficient funds to pay for the rule making, the
10 commission must commence the rule-making process. The commission is
11 not required to engage in rule making until it has collected sufficient
12 payments to cover the projected costs of the rule making. The
13 commission must provide a refund for any overpayment of the costs at
14 the conclusion of the rule making. Between the conclusion of the rule
15 making and June 30, 2013, the commission may collect from applicants
16 for a certificate of public convenience and necessity a portion of the
17 costs of rule making and provide proportionate refunds to the parties
18 that had previously paid for the costs of rule making.

19 NEW SECTION. **Sec. 30.** Nothing in this act supersedes federal,
20 state, or local government requirements to obtain a wastewater
21 discharge permit or a large on-site sewage system operating permit or
22 other permits or licenses required by law in the state of Washington.

23 NEW SECTION. **Sec. 31.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 32.** Except for section 29 of this act, this act
28 takes effect July 1, 2012, if the utilities and transportation
29 commission receives legislative approval, pursuant to RCW 43.135.055,
30 of the regulatory fees proposed by the utilities and transportation
31 commission to recover its costs in implementing this act.

32 NEW SECTION. **Sec. 33.** The utilities and transportation commission
33 must provide written notice as to whether the contingency in section 32

1 of this act occurs to affected parties, the chief clerk of the house of
2 representatives, the secretary of the senate, the office of the code
3 reviser, and others as deemed appropriate by the commission.

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