
SECOND SUBSTITUTE SENATE BILL 5034

State of Washington

62nd Legislature

2011 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators Kilmer, Kastama, Shin, Hatfield, Zarelli, Conway, and Hewitt)

READ FIRST TIME 02/21/11.

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 flow of twenty-
8 seven thousand to one hundred thousand gallons per day if treatment is
9 by a large on-site sewerage system, or to serve one hundred or more
10 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 sewerage, or storm or surface water run-
17 off.

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

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

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

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

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

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

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

36 (e) A certification from the municipal corporation that it is not
37 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. However, a private entity must obtain authorization from
17 the city, town, or county with jurisdiction over the subject property
18 after the legislative authority of the city, town, or county has passed
19 an ordinance requiring that property be taken for public use. This
20 subsection does not limit eminent domain authority granted by any other
21 provision of law.

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

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

1 the system. The department of health or department of ecology,
2 whichever has jurisdiction, must provide regulatory oversight for
3 managing the sewerage system.

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

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

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

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

33 (6) The commission must develop a plan for transfer of the system
34 of sewerage to a new operator. The commission must develop the plan
35 after notice to, and an opportunity to participate by, the receiver,
36 the municipal corporations whose geographic boundaries, in whole or in
37 part, include the system of sewerage at issue, and the public. The

1 commission must complete the plan no later than twelve months after
2 appointment of a receiver.

3 (a) If the commission finds that no private entity is able or
4 willing to take over the system of sewerage and decides the system of
5 sewerage should be taken over by a municipal corporation whose
6 geographic boundaries include the system of sewerage at issue, in whole
7 or in part, the commission must issue an order to that effect, and the
8 municipal corporation shall promptly institute negotiations to purchase
9 the system. If within six months of the commission's order the
10 negotiations fail or otherwise do not result in a purchase, the
11 municipal corporation must promptly institute an action in eminent
12 domain to acquire the system. The court must terminate the
13 receivership once the purchase is complete.

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

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

32 (8) If, as part of the ultimate disposition of the system, an
33 eminent domain action is commenced to acquire the system of sewerage,
34 the court shall oversee any appraisal of the system conducted under
35 Title 7 RCW to assure that the appraised value properly reflects any
36 reduced value because of the necessity to make improvements to the
37 system. The court must have the authority to approve the appraisal,
38 and to modify it based on any information provided at an evidentiary

1 hearing. The court's determination of the proper value of the system,
2 based on the appraisal, is final, and only appealable if not supported
3 by substantial evidence. If the appraised value is appealed, the court
4 may order that the system's ownership be transferred upon payment of
5 the approved appraised value.

6 (9) The legislature grants any municipal corporation, and any
7 private entity the power of eminent domain, under the circumstances
8 described in this section. However, a private entity must obtain
9 authorization from the city, town, or county with jurisdiction over the
10 subject property after the legislative authority of the city, town, or
11 county has passed an ordinance requiring that property be taken for
12 public use. This subsection does not limit eminent domain authority
13 granted by any other provision of law.

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

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

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

36 (c) When two or more public service corporations, (meaning to
37 exclude municipal and other public corporations) are engaged in

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

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

30 (3) Upon the filing of a complaint, the commission (~~shall~~) must
31 cause a copy thereof to be served upon the person or corporation
32 complained of, which (~~shall~~) must be accompanied by a notice fixing
33 the time when and place where a hearing will be had upon such
34 complaint. The time fixed for such hearing (~~shall~~) may not be less
35 than ten days after the date of the service of such notice and
36 complaint, excepting as herein provided. The commission (~~shall~~) must
37 enter its final order with respect to a complaint filed by any entity
38 or person other than the commission within ten months from the date of

1 filing of the complaint, unless the date is extended for cause. Rules
2 of practice and procedure not otherwise provided for in this title may
3 be prescribed by the commission. Such rules may include the
4 requirement that a complainant use informal processes before filing a
5 formal complaint.

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

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

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

1 the company by the customer. The commission may issue an order or take
2 any other action to ensure that no such steps are taken by the system
3 or company. The customer may, at the customer's option and expense,
4 obtain a water quality test by a licensed or otherwise qualified water
5 testing laboratory, of the water delivered to the customer by the water
6 system or company, and provide the results of such a test to the
7 commission. If the commission determines that the water does not meet
8 state drinking water standards, it (~~shall~~) must exercise its
9 authority over the system or company as provided in this title, and
10 may, where appropriate, order a refund to the customer on a pro rata
11 basis for the substandard water delivered to the customer, and
12 (~~shall~~) must order reimbursement to the customer for the cost
13 incurred by the customer, if any, in obtaining a water quality test.

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

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

1 be denied permission. Actions may be instituted to review rules and
2 regulations promulgated under this section as in the case of orders of
3 the commission.

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

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

16 (2) The commission (~~((shall have))~~) has the power to make
17 revaluations of the property of any public service company from time to
18 time.

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

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

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

1 to the safety of any telecommunications line, electrical plant, system
2 of sewerage, or water system owned and operated by any city or town,
3 but all other provisions enumerated herein (~~shall~~) apply to public
4 utilities owned by any city or town.

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

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

16 (2) Every gas company, electrical company, wastewater company, and
17 water company (~~shall~~) must furnish and supply such service,
18 instrumentalities and facilities as shall be safe, adequate and
19 efficient, and in all respects just and reasonable.

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

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

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

34 (b) Provides self-certification of household income for the prior
35 twelve months to a grantee of the department of (~~community, trade, and~~
36 ~~economic development~~) commerce, which administers federally funded
37 energy assistance programs. The grantee (~~shall~~) must determine that

1 the household income does not exceed the maximum allowed for
2 eligibility under the state's plan for low-income energy assistance
3 under 42 U.S.C. 8624 and (~~shall~~) must provide a dollar figure that is
4 seven percent of household income. The grantee may verify information
5 provided in the self-certification;

6 (c) Has applied for home heating assistance from applicable
7 government and private sector organizations and certifies that any
8 assistance received will be applied to the current bill and future
9 utility bills;

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

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

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

30 (5) The utility shall:

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

34 (b) Assist the customer in fulfilling the requirements under this
35 section;

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

1 (d) Be permitted to disconnect service if the customer fails to
2 honor the payment program. Utilities may continue to disconnect
3 service for those practices authorized by law other than for nonpayment
4 as provided for in this subsection. Customers who qualify for payment
5 plans under this section who default on their payment plans and are
6 disconnected can be reconnected and maintain the protections afforded
7 under this chapter by paying reconnection charges, if any, and by
8 paying all amounts that would have been due and owing under the terms
9 of the applicable payment plan, absent default, on the date on which
10 service is reconnected; and

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

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

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

25 (8) Every gas company, electrical company, wastewater company, and
26 water company (~~shall~~) must construct and maintain such facilities in
27 connection with the manufacture and distribution of its product, or
28 provision of its services, as will be efficient and safe to its
29 employees and the public.

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

33 (10) In establishing rates or charges for water service, water
34 companies as defined in RCW 80.04.010 may consider the achievement of
35 water conservation goals and the discouragement of wasteful water use
36 practices.

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

3 Whenever the commission shall find, after a hearing had upon its
4 own motion, or upon complaint, that the rates or charges demanded,
5 exacted, charged or collected by any gas company, electrical company,
6 wastewater company, or water company, for gas, electricity, wastewater
7 company services, or water, or in connection therewith, or that the
8 rules, regulations, practices or contracts affecting such rates or
9 charges are unjust, unreasonable, unjustly discriminatory or unduly
10 preferential, or in any wise in violation of the provisions of the law,
11 or that such rates or charges are insufficient to yield a reasonable
12 compensation for the service rendered, the commission (~~shall~~) must
13 determine the just, reasonable, or sufficient rates, charges,
14 regulations, practices or contracts to be thereafter observed and in
15 force, and (~~shall~~) must fix the same by order.

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

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

1 70.118B or 90.48 RCW for treatment and disposal of sewerage, is prima
2 facie evidence that the system of sewerage is insufficient, inadequate,
3 or inefficient.

4 (2) In ordering improvements in the storage, distribution, or
5 supply of water, the commission (~~(shall)~~) must consult and coordinate
6 with the department of health. In the event that a water company fails
7 to comply with an order of the commission (~~(in a timely fashion)~~)
8 within the deadline specified in the order, the commission may request
9 that the department petition the superior court of Thurston county to
10 place the company in receivership pursuant to chapter 7.60 RCW.

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

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

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

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

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

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

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

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

22 (1) Unless the commission otherwise orders, no change (~~shall~~) may
23 be made in any rate or charge or in any form of contract or agreement
24 or in any rule or regulation relating to any rate, charge or service,
25 or in any general privilege or facility which shall have been filed and
26 published by a gas company, electrical company, wastewater company, or
27 water company in compliance with the requirements of RCW 80.28.050
28 except after thirty days' notice to the commission and publication for
29 thirty days, which notice (~~shall~~) must plainly state the changes
30 proposed to be made in the schedule then in force and the time when the
31 change will go into effect and all proposed changes (~~shall~~) must be
32 shown by printing, filing and publishing new schedules, or shall be
33 plainly indicated upon the schedules in force at the time and kept open
34 to public inspection. Proposed changes may be suspended by the
35 commission within thirty days or before the stated effective date of
36 the proposed change, whichever is later. The commission, for good

1 cause shown, may allow changes without requiring the thirty days'
2 notice by duly filing, in such manner as it may direct, an order
3 specifying the changes so to be made and the time when it (~~shall~~)
4 takes effect. All such changes (~~shall~~) must be immediately indicated
5 upon its schedules by the company affected. When any change is made in
6 any rate or charge, form of contract or agreement, or any rule or
7 regulation relating to any rate or charge or service, or in any general
8 privilege or facility, the effect of which is to increase any rate or
9 charge, then in existence, attention (~~shall~~) must be directed on the
10 copy filed with the commission to such increase by some character
11 immediately preceding or following the item in such schedule, such
12 character to be in form as designated by the commission.

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

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

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

35 For the purposes of this subsection (1):

36 (i) "Employees" (~~as used in this paragraph shall~~) includes

1 furloughed, pensioned and superannuated employees, persons who have
2 become disabled or infirm in the service of any such company; and (~~the~~
3 ~~term~~))

4 (ii) "Families(~~(7)~~)" (~~(as used in this paragraph, shall)~~) includes
5 the families of those persons named in this proviso, the families of
6 persons killed or dying in the service, also the families of persons
7 killed, and the surviving spouse prior to remarriage, and the minor
8 children during minority of persons who died while in the service of
9 any of the companies named in this (~~paragraph:—PROVIDED FURTHER,~~
10 ~~That~~) subsection (1).

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

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

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

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

24 No gas company, electrical company, wastewater company, or water
25 company (~~shall~~) may make or grant any undue or unreasonable
26 preference or advantage to any person, corporation, or locality, or to
27 any particular description of service in any respect whatsoever, or
28 subject any particular person, corporation or locality or any
29 particular description of service to any undue or unreasonable
30 prejudice or disadvantage in any respect whatsoever.

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

33 No gas company, electrical company, wastewater company, or water
34 company (~~shall~~) may, directly or indirectly, or by any special rate,
35 rebate, drawback or other device or method, charge, demand, collect or
36 receive from any person or corporation a greater or less compensation

1 for gas, electricity, wastewater company services, or water, or for any
2 service rendered or to be rendered, or in connection therewith, except
3 as authorized in this chapter, than it charges, demands, collects or
4 receives from any other person or corporation for doing a like or
5 contemporaneous service with respect thereto under the same or
6 substantially similar circumstances or conditions.

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

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

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

22 Every gas, water, wastewater, or electrical company owning,
23 operating or managing a plant or system for the distribution and sale
24 of gas, water or electricity, or the provision of wastewater company
25 services to the public for hire (~~shall be~~) is, and (~~be~~) is held to
26 be, a public service company as to such plant or system and as to all
27 gas, water, wastewater company services, or electricity distributed or
28 furnished therefrom, whether such gas, water, wastewater company
29 services, or electricity be sold wholesale or retail or be distributed
30 wholly to the general public or in part as surplus gas, water,
31 wastewater company services, or electricity to manufacturing or
32 industrial concerns or to other public service companies or
33 municipalities for redistribution. Nothing in this title (~~shall~~) may
34 be construed to prevent any gas company, electrical company or water
35 company from continuing to furnish its product or the use of its lines,
36 equipment or service under any contract or contracts in force on June

1 7, 1911, at the rates fixed in such contract or contracts(~~(+PROVIDED,~~
2 ~~That)~~). However, the commission (~~(shall have)~~) has power, in its
3 discretion, to direct by order that such contract or contracts
4 (~~(shall)~~) be terminated by the company party thereto and thereupon such
5 contract or contracts (~~(shall)~~) must be terminated by such company as
6 and when directed by such order.

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

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

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

22 The commission may develop and enter into an agreement with a
23 county to carry out the regulatory functions of this chapter with
24 regard to water companies or wastewater companies located within the
25 boundary of that county. The duration of the agreement, the duties to
26 be performed, and the remuneration to be paid by the commission are
27 subject to agreement by the commission and the county.

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

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

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

34 (b) Make, or cause to be made, any connection or reconnection with

1 property owned or used by the utility to provide utility service
2 without the authorization or consent of the utility;

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

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

8 (e) Use or receive the direct benefit of all or a portion of the
9 utility service with knowledge of, or reason to believe that, the
10 diversion, tampering, or unauthorized connection existed at the time of
11 the use or that the use or receipt was without the authorization or
12 consent of the utility.

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

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

24 (4) As used in this section:

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

27 (b) "Divert" means to change the intended course or path of
28 electricity, gas, or water without the authorization or consent of the
29 utility;

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

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

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

37 (f) "Utility" means any electrical company, gas company, wastewater

1 company, or water company as those terms are defined in RCW 80.04.010,
2 and includes any electrical, gas, system of sewerage, or water system
3 operated by any public agency; and

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

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

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

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

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

1 provisions of law governing clean water as referenced by the commission
2 by rule.

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

5 (1) A receiver may be appointed by the superior court of this state
6 in the following instances, but except in any case in which a
7 receiver's appointment is expressly required by statute, or any case in
8 which a receiver's appointment is sought by a state agent whose
9 authority to seek the appointment of a receiver is expressly conferred
10 by statute, or any case in which a receiver's appointment with respect
11 to real property is sought under (b)(ii) of this subsection, a receiver
12 shall be appointed only if the court additionally determines that the
13 appointment of a receiver is reasonably necessary and that other
14 available remedies either are not available or are inadequate:

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

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

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

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

- 1 (c) After judgment, in order to give effect to the judgment;
- 2 (d) To dispose of property according to provisions of a judgment
3 dealing with its disposition;
- 4 (e) To the extent that property is not exempt from execution, at
5 the instance of a judgment creditor either before or after the issuance
6 of any execution, to preserve or protect it, or prevent its transfer;
- 7 (f) If and to the extent that property is subject to execution to
8 satisfy a judgment, to preserve the property during the pendency of an
9 appeal, or when an execution has been returned unsatisfied, or when an
10 order requiring a judgment debtor to appear for proceedings
11 supplemental to judgment has been issued and the judgment debtor fails
12 to submit to examination as ordered;
- 13 (g) Upon an attachment of real or personal property when the
14 property attached is of a perishable nature or is otherwise in danger
15 of waste, impairment, or destruction, or where the abandoned property's
16 owner has absconded with, secreted, or abandoned the property, and it
17 is necessary to collect, conserve, manage, control, or protect it, or
18 to dispose of it promptly, or when the court determines that the nature
19 of the property or the exigency of the case otherwise provides cause
20 for the appointment of a receiver;
- 21 (h) In an action by a transferor of real or personal property to
22 avoid or rescind the transfer on the basis of fraud, or in an action to
23 subject property or a fund to the payment of a debt;
- 24 (i) In an action against any person who is not an individual if the
25 object of the action is the dissolution of that person, or if that
26 person has been dissolved, or if that person is insolvent or is not
27 generally paying the person's debts as those debts become due unless
28 they are the subject of bona fide dispute, or if that person is in
29 imminent danger of insolvency;
- 30 (j) In accordance with RCW 7.08.030 (4) and (6), in cases in which
31 a general assignment for the benefit of creditors has been made;
- 32 (k) In quo warranto proceedings under chapter 7.56 RCW;
- 33 (l) As provided under RCW 11.64.022;
- 34 (m) In an action by the department of licensing under RCW
35 18.35.220(3) with respect to persons engaged in the business of
36 dispensing of hearing aids, RCW 18.85.430 in the case of persons
37 engaged in the business of a real estate broker, associate real estate

1 broker, or real estate salesperson, or RCW 19.105.470 with respect to
2 persons engaged in the business of camping resorts;

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

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

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

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

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

16 (s) In an action by the director of financial institutions under
17 RCW 21.20.390 in cases involving actual or threatened violations of the
18 securities act of Washington or under RCW 21.30.120 in cases involving
19 actual or threatened violations of chapter 21.30 RCW with respect to
20 certain businesses and transactions involving commodities;

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

27 (u) In any action in which the dissolution of any public or private
28 entity is sought, in any action involving any dispute with respect to
29 the ownership or governance of such an entity, or upon the application
30 of a person having an interest in such an entity when the appointment
31 is reasonably necessary to protect the property of the entity or its
32 business or other interests;

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

35 (w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030,
36 in the case of a bank or trust company or, under and subject to RCW
37 32.24.070 through 32.24.090, in the case of a mutual savings bank;

1 (x) Under and subject to RCW 31.12.637 and 31.12.671 through
2 31.12.724, in the case of credit unions;

3 (y) Upon the application of the director of financial institutions
4 under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable
5 to agricultural lenders, under RCW 31.40.120 in actions to enforce
6 chapter 31.40 RCW applicable to entities engaged in federally
7 guaranteed small business loans, under RCW 31.45.160 in actions to
8 enforce chapter 31.45 RCW applicable to persons licensed as check
9 cashers or check sellers, or under RCW 19.230.230 in actions to enforce
10 chapter 19.230 RCW applicable to persons licensed under the uniform
11 money services act;

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

14 (aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce
15 rights under any revenue bonds issued for the purpose of financing
16 industrial development facilities or bonds of the Washington state
17 housing finance commission, or any financing document securing any such
18 bonds;

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

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

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

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

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

34 (gg) Upon application of the attorney general under RCW
35 64.36.220(3), in aid of any writ or order restraining or enjoining
36 violations of chapter 64.36 RCW applicable to timeshares;

37 (hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment

1 or performance of municipal bonds issued with respect to facilities
2 used to abate, control, or prevent pollution;

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

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

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

11 (ll) Upon application of the attorney general or the department of
12 licensing, in any proceeding that either of them are authorized by
13 statute to bring to enforce Title 18 or 19 RCW; the securities act of
14 Washington, chapter 21.20 RCW; the Washington commodities act, chapter
15 21.30 RCW; the land development act, chapter 58.19 RCW; or under
16 chapter 64.36 RCW relating to the regulation of timeshares;

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

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

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

36 (3) At least seven days' notice of any application for the
37 appointment of a receiver (~~shall~~) must be given to the owner of
38 property to be subject thereto and to all other parties in the action,

1 and to other parties in interest as the court may require. If any
2 execution by a judgment creditor under Title 6 RCW or any application
3 by a judgment creditor for the appointment of a receiver, with respect
4 to property over which the receiver's appointment is sought, is pending
5 in any other action at the time the application is made, then notice of
6 the application for the receiver's appointment also (~~shall~~) must be
7 given to the judgment creditor in the other action. The court may
8 shorten or expand the period for notice of an application for the
9 appointment of a receiver upon good cause shown.

10 (4) The order appointing a receiver in all cases (~~shall~~) must
11 reasonably describe the property over which the receiver is to take
12 charge, by category, individual items, or both if the receiver is to
13 take charge of less than all of the owner's property. If the order
14 appointing a receiver does not expressly limit the receiver's authority
15 to designated property or categories of property of the owner, the
16 receiver is a general receiver with the authority to take charge over
17 all of the owner's property, wherever located.

18 (5) The court may condition the appointment of a receiver upon the
19 giving of security by the person seeking the receiver's appointment, in
20 such amount as the court may specify, for the payment of costs and
21 damages incurred or suffered by any person should it later be
22 determined that the appointment of the receiver was wrongfully
23 obtained.

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

26 After adoption of the sewerage and/or water general plan, all
27 municipal corporations and private utilities within the plan area
28 (~~shall~~) must abide by and adhere to the plan for the future
29 development of their systems. A municipal corporation or private
30 utility, including a wastewater company as defined in RCW 80.04.010,
31 may petition for amendments to the plan. Whenever the governing
32 authority of any county or counties or any municipal corporation deems
33 it to be for the public interest to amend the sewerage and/or water
34 general plan for such county or counties, notice shall be filed with
35 the board or boards of county commissioners. Upon such notice, the
36 board or boards (~~shall~~) must initiate consideration of any amendment

1 requested relating to the plan and proceed as provided in this chapter
2 for the adoption of an original plan.

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

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

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

32 NEW SECTION. **Sec. 31.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected.

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

6 NEW SECTION. **Sec. 33.** The utilities and transportation commission
7 must provide written notice as to whether the contingency in section 32
8 of this act occurs to affected parties, the chief clerk of the house of
9 representatives, the secretary of the senate, the office of the code
10 reviser, and others as deemed appropriate by the commission.

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