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HOUSE BILL 1990

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State of Washington

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By Representatives Abbarno, Doglio, and Parshley

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1 AN ACT Relating to authorizing utility companies to securitize  
2 certain costs related to disasters or emergencies to lower costs to  
3 customers; amending RCW 80.28.005, 80.28.303, 80.28.306, 80.28.309,  
4 and 80.08.140; adding new sections to chapter 80.28 RCW; creating new  
5 sections; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The purpose of this act is to allow an  
8 electrical, gas, or water company, if authorized by an order issued  
9 by the utilities and transportation commission, to use securitization  
10 financing for certain types of costs related to emergency events and  
11 approved for recovery in rates. The legislature finds that:

12 (1) Securitized debt may lower the total rates in comparison with  
13 other methods of recovery and may benefit the citizens of this state  
14 who are electrical, gas, or water company customers;

15 (2) Rate recovery bonds are not a public debt or pledge of the  
16 full faith and credit of the state but require the state to provide  
17 clear and exclusive methods to create, transfer, and encumber the  
18 rate recovery assets and prohibit future impairment; and

19 (3) This act allowing electrical, gas, or water companies to use  
20 securitization financing for emergency-related costs does not limit,  
21 impair, or affect the utilities and transportation commission's

1 plenary authority and jurisdiction over rates and services offered by  
2 electrical, gas, or water companies.

3 **Sec. 2.** RCW 80.28.005 and 1994 c 268 s 1 are each amended to  
4 read as follows:

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout this chapter.

7 (1) "Assignee" means a person, and any subsequent assignee, to  
8 which an electrical, gas, or water company assigns, sells, or  
9 transfers all or part of the electrical, gas, or water company's  
10 interest in or right to rate recovery assets, except as security.

11 (2) "Bond" includes bonds, notes, certificates of beneficial  
12 interests in a trust, or other evidences of indebtedness.

13 (3) "Bondable ((conservation—investment)) rate recovery  
14 expenditures" means all costs and expenditures ((made)) incurred or  
15 to be incurred through the date of issuance of a financing order by  
16 an electrical, gas, or water ((companies)) company associated with  
17 ((respect to energy)):

18 (a) An event that is the subject of a federal or state  
19 declaration of disaster or emergency, such as severe weather,  
20 catastrophic wildfire, earthquake, pandemic, or other event that  
21 causes or threatens to cause widespread loss of life, injury to  
22 person or property, human suffering, or financial loss, including  
23 those costs and expenses owed by an electrical, gas, or water company  
24 to such company's customers or others as a result of the event, but  
25 not including fines or penalties imposed as a result of criminal or  
26 civil enforcement actions; or

27 (b) Energy or water conservation measures and services intended  
28 to improve the efficiency of electricity, gas, or water end use,  
29 including related carrying costs if:

30 ((+a)) (i) The conservation measures and services do not produce  
31 assets that would be bondable utility property under the general  
32 utility mortgage of the electrical, gas, or water company;

33 ((+b)) (ii) The commission has determined that the expenditures  
34 were incurred in conformance with the terms and conditions of a  
35 conservation service tariff in effect with the commission at the time  
36 the costs were incurred, and at the time of such determination the  
37 commission finds that the company has proven that the costs were  
38 prudent, that the terms and conditions of the financing are

1 reasonable, and that financing under this chapter is more favorable  
2 to the customer than other reasonably available alternatives;

3 ~~((e))~~ (iii) The commission has approved inclusion of the  
4 expenditures in rate base and has not ordered that they be currently  
5 expensed; and

6 ~~((d))~~ (iv) The commission has not required that the measures  
7 demonstrate that energy or water savings have persisted at a certain  
8 level for a certain period before approving the cost of these  
9 investments as bondable (~~(conservation investment)~~) rate recovery  
10 expenditures.

11 ~~((2) "Conservation bonds" means bonds, notes, certificates of~~  
12 ~~beneficial interests in trusts, or other evidences of indebtedness or~~  
13 ~~ownership that:~~

14 ~~(a) The commission determines at or before the time of issuance~~  
15 ~~are issued to finance or refinance bondable conservation investment~~  
16 ~~by an electrical, gas or water company; and~~

17 ~~(b) Rely partly or wholly for repayment on conservation~~  
18 ~~investment assets and revenues arising with respect thereto.~~

19 ~~(3) "Conservation investment assets" means the statutory right of~~  
20 ~~an electrical, gas, or water company:~~

21 ~~(a) To have included in rate base all of its bondable~~  
22 ~~conservation investment and related carrying costs; and~~

23 ~~(b) To receive through rates revenues sufficient to recover the~~  
24 ~~bondable conservation investment and the costs of equity and debt~~  
25 ~~capital associated with it, including, without limitation, the~~  
26 ~~payment of principal, premium, if any, and interest on conservation~~  
27 ~~bonds.)~~

28 (4) "Bondholder" means a holder or owner of a rate recovery bond.

29 (5) "Finance subsidiary" means any corporation, limited liability  
30 company, company, association, joint stock association, ((e)) trust,  
31 or other entity that is beneficially owned, directly or indirectly,  
32 by an electrical, gas, or water company, or in the case of a trust  
33 issuing (~~(conservation)~~) rate recovery bonds consisting of beneficial  
34 interests, for which an electrical, gas, or water company or a  
35 subsidiary thereof is the grantor, or an unaffiliated entity formed  
36 for the purpose of financing or refinancing approved (~~(conservation~~  
37 ~~investment)~~) bondable rate recovery expenditures, and that acquires  
38 (~~(conservation investment)~~) rate recovery assets directly or  
39 indirectly from such company in a transaction approved by the  
40 commission.

1       (6) "Financing costs" includes the following costs related to  
2 rate recovery bonds, whether incurred and paid upon issuance or over  
3 the life of rate recovery bonds:

4       (a) The costs of issuing, serving, managing, repaying, or  
5 refinancing rate recovery bonds, including any fees, expenses, or  
6 charges incurred and the costs of any activities performed in  
7 connection with the rate recovery bonds, including:

8       (i) Information technology programming;

9       (ii) Obtaining a financing order;

10       (iii) Serving, accounting, or auditing;

11       (iv) Services related to trustees;

12       (v) Legal services;

13       (vi) Consulting;

14       (vii) Services related to financial and structuring advisors;

15       (viii) Administration;

16       (ix) Placement and underwriting;

17       (x) Services related to independent directors and managers;

18       (xi) Services related to rating agencies;

19       (xii) Stock exchange listing and compliance;

20       (xiii) Securities registration and filing; and

21       (xiv) Services necessary to ensure a timely payment of rate  
22 recovery bonds or other amounts or charges payable in connection with  
23 rate recovery bonds;

24       (b) Principal, interest and acquisition, defeasance, and  
25 redemption premiums payable on rate recovery bonds;

26       (c) Payments required under an ancillary agreement and any  
27 amounts required to fund or replenish a reserve or account  
28 established under the terms of an indenture, ancillary agreement, or  
29 financing document related to rate recovery bonds;

30       (d) Applicable federal, state, and local taxes, franchise fees,  
31 license fees, gross receipts, or other taxes or charges, whether  
32 paid, payable, or accrued; and

33       (e) The commission's costs in performing the commission's duties  
34 related to rate recovery bonds that are recoverable by the commission  
35 under RCW 80.24.010.

36       (7) "Financing order" means an order issued by the commission  
37 that authorizes one or more of the following:

38       (a) The recovery of bondable rate recovery expenditures and  
39 financing costs;

40       (b) The creation of rate recovery assets;

1       (c) The issuance of rate recovery bonds;  
2       (d) The imposition, collection, and periodic adjustment of rate  
3 recovery charges; or  
4       (e) The sale, assignment, or transfer of rate recovery assets to  
5 an assignee.  
6       (8) "Financing party" includes:  
7       (a) Bondholders, trustees, agents, and secured parties related to  
8 rate recovery bonds;  
9       (b) A person acting for the benefit of bondholders, trustees,  
10 agents, or secured parties; and  
11       (c) A party to rate recovery bond documents or an ancillary  
12 agreement.  
13       (9) "Rate recovery asset" means the right of an electrical, gas,  
14 or water company to recover from customers bondable rate recovery  
15 expenditures and related costs and expenses approved in a financing  
16 order, including the right to:  
17       (a) Impose, charge, bill, collect, receive, hold, and apply rate  
18 recovery charges authorized under a financing order or obtain, to the  
19 extent authorized, periodic adjustments of rate recovery charges; and  
20       (b) All claims, accounts, revenues, payments, collections,  
21 moneys, or proceeds arising from the rights and interest specified in  
22 a financing order, regardless of whether the claims, accounts,  
23 revenues, payments, collections, moneys, or proceeds arising from the  
24 rights and interest specified in the financing order are commingled  
25 with other claims, accounts, revenues, payments, collections, moneys,  
26 or proceeds.  
27       (10) "Rate recovery bonds" means bonds, notes, certificates of  
28 beneficial interests in trusts, or other evidences of indebtedness or  
29 ownership that:  
30       (a) The commission determines at or before the time of issuance  
31 are issued to finance or refinance bondable rate recovery  
32 expenditures by an electrical, gas, or water company; and  
33       (b) Rely partly or wholly for repayment on rate recovery assets  
34 and revenues arising with respect thereto.  
35       (11) "Rate recovery charge" means charges to electrical, gas, or  
36 water company customers authorized by the commission to recover  
37 bondable rate recovery expenditures and financing costs and to be  
38 used to pay, repay, or refinance rate recovery bonds.  
39       (12) "Secured party" means a financing party that has been  
40 granted a security interest in rate recovery assets.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 80.28  
2 RCW to read as follows:

3        (1) It is the policy of the state of Washington to encourage the  
4 financing of certain costs and expenses by electrical, gas, and water  
5 companies at the lowest, reasonable, and prudent cost to customers of  
6 such companies including, but not limited to, bondable rate recovery  
7 expenditures.

8        (2) To carry out the policy described in subsection (1) of this  
9 section, the state of Washington and all agencies, instrumentalities,  
10 political subdivisions, and local governments thereof:

11        (a) Acknowledge that owners of rate recovery assets, bondholders,  
12 and financing parties require certainty with respect to the owners,  
13 bondholders, and financing parties' rights to enter into financing  
14 transactions that offer the lowest, reasonable, and prudent cost; and

15        (b) Pledge and agree with electrical, gas, and water companies;  
16 assignees; bondholders; and financing parties not to reduce, alter,  
17 or impair, in a manner that is adverse to the electrical, gas, and  
18 water companies; assignees; bondholders; or financing parties:

19        (i) Rate recovery assets;

20        (ii) Rate recovery bonds or the security for rate recovery bonds;  
21 or

22        (iii) Rate recovery charges or the collection of rate recovery  
23 charges.

24        (3) The pledge and agreement described under subsection (2)(b) of  
25 this section includes the pledge and agreement not to reduce, alter,  
26 or impair rate recovery assets, rate recovery bonds or the security  
27 for rate recovery bonds, or rate recovery charges or the collection  
28 of rate recovery charges by taking any of the following actions:

29        (a) Altering the provisions of this section or RCW 80.28.005,  
30 80.28.303, 80.28.306, or 80.28.309 to the extent that those  
31 provisions authorize the commission to issue financing orders that:

32        (i) Create rate recovery assets;

33        (ii) Establish rate recovery charges that may not be avoided by  
34 electrical, gas, or water company customers, as described under  
35 section 4(4) of this act; or

36        (iii) Provide rights and remedies to electrical, gas, and water  
37 companies; assignees; bondholders; and financing parties;

38        (b) Impairing the rights or remedies of electrical, gas, and  
39 water companies; assignees; bondholders; or financing parties that  
40 are created under this section and RCW 80.28.005, 80.28.303,

1 80.28.306, and 80.28.309 or by a financing order, including reducing  
2 the amount of or impairing the collection of rate recovery charges  
3 until all principal, interest, premium, if any, and other amounts due  
4 on the rate recovery bonds and financing costs have been paid in full  
5 and except as provided under section 4 of this act; or

6 (c) Taking any action listed under section 4(5)(b) of this act.

7 (4) An electrical, gas, or water company or financing subsidiary  
8 that issues rate recovery bonds may include the pledge and provisions  
9 of this section in the bonds and related documentation.

10 NEW SECTION. **Sec. 4.** A new section is added to chapter 80.28  
11 RCW to read as follows:

12 (1)(a) An electrical, gas, or water company may apply to the  
13 commission for a financing order designating all or part of rate  
14 recovery expenditures as bondable rate recovery expenditures, for the  
15 purpose of financing or refinancing the designated expenditures under  
16 RCW 80.28.306(1). A company may request this designation by the  
17 commission in separate proceedings for this purpose or in connection  
18 with a general rate case.

19 (b) After notice and an opportunity for a hearing, the commission  
20 may approve an application if the commission finds that:

21 (i) The bondable rate recovery expenditures included in the  
22 application are reasonable and prudent;

23 (ii) Financing or refinancing the bondable rate recovery  
24 expenditures through the issuance of rate recovery bonds is likely to  
25 be more favorable to electrical, gas, or water company customers for  
26 the recovery of the bondable rate recovery expenditures than other  
27 methods of rate recovery; and

28 (iii) Bonds, notes, certificates of beneficial interests in a  
29 trust, and other evidences of indebtedness or ownership issued  
30 pursuant to the approval are reasonably likely to receive a  
31 determination of, at a minimum, investment grade by credit rating  
32 agencies.

33 (c) The commission shall issue an order within 180 days of an  
34 application approving or denying the application. If the commission  
35 approves the application, the commission shall issue a financing  
36 order.

37 (2)(a) A financing order issued under this section shall specify  
38 the highest amount of rate recovery expenditures that qualify as  
39 bondable rate recovery expenditures.

1 (b) In specifying the amount for bondable rate recovery  
2 expenditures associated with an event described in RCW  
3 80.28.005(3)(a), net of appropriate adjustments as determined by the  
4 commission to be reasonable, the commission may include, but is not  
5 limited to including, the following rate recovery expenditures:

6 (i) Capital and operating costs incurred or to be incurred as a  
7 result of the event;

8 (ii) Lost revenue associated with the event;

9 (iii) Costs and expenses that may be recovered at a later time  
10 from third parties or insurers and returned to electrical, gas, or  
11 water company customers through a separate rate proceeding consistent  
12 with cost causation and rate design principles and statutory or  
13 regulatory requirements; and

14 (iv) Carrying costs or charges.

15 (3) A financing order issued under this section must include the  
16 following provisions:

17 (a) Confirmation of the existence of recoverable bondable rate  
18 recovery expenditures and authorization to recover bondable rate  
19 recovery expenditures and associated financing costs, including the  
20 maximum principal amount of bondable rate recovery expenditures and  
21 financing costs that may be recovered through securitization;

22 (b) Authorization for the creation of rate recovery assets and  
23 imposition of rate recovery charges that allow for the recovery of  
24 rate recovery expenditures, as determined by the commission, and  
25 associated financing costs;

26 (c) A requirement that the rate recovery charges authorized by  
27 the financing order are ongoing and may not be avoided by an  
28 electrical, gas, or water company customer, as described under  
29 subsection (4) of this section, until all principal, interest,  
30 premium, if any, and other amounts due on the rate recovery bonds and  
31 financing costs have been paid in full;

32 (d) A methodology for:

33 (i) Allocating rate recovery charges between the different  
34 classes of electrical, gas, or water company customers, which may  
35 include not allocating rate recovery charges to one or more classes  
36 of such company's customers, that is consistent with cost causation  
37 and rate design principles and statutory or regulatory requirements;  
38 and

39 (ii) Adjusting rate recovery charges as necessary to ensure  
40 timely payment on, and payment in full of, the rate recovery bonds



1 and associated financing costs or in response to changes to  
2 applicable customers, service territories, or collection rates;

3 (e) Authorization for the electrical, gas, or water company to  
4 issue one or more series of rate recovery bonds with flexibility for  
5 such company to establish the terms and conditions of the rate  
6 recovery bonds, including repayment schedules, initial interest  
7 rates, and initial financing costs;

8 (f) Authorization to assign rate recovery assets to a financing  
9 subsidiary and grant security interests in the rate recovery assets  
10 to secured parties without limiting the rights of subsequent  
11 assignees;

12 (g) Authorization for the bond documentation and ancillary  
13 documents related to the rate recovery bonds, including servicing  
14 arrangements for the rate recovery charges, without requiring the  
15 authorization to be on the final forms of the documents;

16 (h) Authorization for the electrical, gas, or water company to  
17 earn a return, at the cost of capital authorized in such company's  
18 most recent general rate case prior to the date of the financing  
19 order, on any moneys advanced by such company to fund advances,  
20 reserves, or capital accounts established under the terms of any  
21 indenture, ancillary agreement, or financing documents related to the  
22 rate recovery bonds;

23 (i) A finding that the proposed issuance of rate recovery bonds  
24 and the imposition of rate recovery charges is expected to provide  
25 the lowest possible, reasonable, and prudent cost on a net present  
26 value basis to electrical, gas, or water company customers for  
27 recovery of the bondable rate recovery expenditures as compared to  
28 other methods of financing and recovery;

29 (j) A date, not earlier than one year from the date that the  
30 financing order becomes final, on which the authority to issue rate  
31 recovery bonds granted in the financing order expires;

32 (k) A requirement that the electrical, gas, or water company  
33 notify the commission if such company recovers costs and expenses  
34 from a third party or insurer; and

35 (l) Any other conditions that the commission finds appropriate  
36 and that are consistent with this section.

37 (4) Rate recovery charges authorized by a financing order shall  
38 be collected through the rates or charges paid by, and may not be  
39 avoided by, the electrical, gas, or water company customers located  
40 within such company's service territory, as the territory existed on

1 the date of the financing order or, if the financing order provides,  
2 as such service territory may be expanded, even if:

3 (a) Such company's customer receives electricity, natural gas, or  
4 water; electricity, natural gas, or water services; or ancillary  
5 services from a successor or assignee of such company;

6 (b) Such company's customer elects to receive electricity,  
7 natural gas, or water; electricity, natural gas, or water services;  
8 or ancillary services from another electrical, gas, or water company  
9 or service provider in the service territory; or

10 (c) After the date of issuance of the financing order, such  
11 company's customer changes customer class.

12 (5) (a) Rate recovery assets, including rate recovery charges, and  
13 the rights of electrical, gas, and water companies; assignees;  
14 bondholders; and financing parties, established by a financing order  
15 issued under this section, are irrevocable and unchangeable, except  
16 as provided in the financing order, until all principal, interest,  
17 premium, if any, and other amounts due on the rate recovery bonds and  
18 financing costs are paid in full.

19 (b) Until all principal, interest, premium, if any, and other  
20 amounts due on the rate recovery bonds and financing costs are paid  
21 in full, the commission, except as provided in the financing order,  
22 the state of Washington, and all agencies, instrumentalities,  
23 political subdivisions, and local governments thereof may not:

24 (i) Revalue the bondable rate recovery expenditures or financing  
25 costs for rate-making purposes;

26 (ii) Determine that the rates or revenues authorized under the  
27 financing order are unjust or unreasonable;

28 (iii) Reduce, alter, or impair the rate recovery assets, rate  
29 recovery charges or the collection of the rate recovery charges, or  
30 rate recovery bonds or the security for the rate recovery bonds;

31 (iv) Rescind, suspend, amend, or impair the financing order; or

32 (v) When setting other rates or charges for the electrical, gas,  
33 or water company or taking other actions pursuant to the commission's  
34 authority, consider the rate recovery bonds as debt of such company,  
35 the rate recovery assets to be revenue for such company, or the  
36 bondable rate recovery expenditures to be costs of such company.

37 (6) The commission may not require an electrical, gas, or water  
38 company to:

1 (a) Apply to the commission for a financing order designating all  
2 or part of rate recovery expenditures as bondable rate recovery  
3 expenditures; or

4 (b) Finance or refinance rate recovery expenditures that the  
5 commission has designated bondable rate recovery expenditures.

6 **Sec. 5.** RCW 80.28.303 and 1994 c 268 s 2 are each amended to  
7 read as follows:

8 (1) An electrical, gas, or water company may file a conservation  
9 service tariff with the commission. The tariff shall provide:

10 (a) The terms and conditions upon which the company will offer  
11 the conservation measures and services specified in the tariff;

12 (b) The period of time during which the conservation measures and  
13 services will be offered; and

14 (c) The maximum amount of expenditures to be made during a  
15 specified time period by the company on conservation measures and  
16 services specified in the tariff.

17 (2) The commission has the same authority with respect to a  
18 proposed conservation service tariff as it has with regard to any  
19 other schedule or classification the effect of which is to change any  
20 rate or charge, including, without limitation, the power granted by  
21 RCW 80.04.130 to conduct a hearing concerning a proposed conservation  
22 service tariff and the reasonableness and justness thereof, and  
23 pending such hearing and the decision thereon the commission may  
24 suspend the operation of the tariff for a period not exceeding ten  
25 months from the time the tariff would otherwise go into effect.

26 (3) ~~((An electrical, gas, or water company may from time to time  
27 apply to the commission for a determination that specific  
28 expenditures may under its tariff constitute bondable conservation  
29 investment. A company may request this determination by the  
30 commission in separate proceedings for this purpose or in connection  
31 with a general rate case. The commission may designate the  
32 expenditures as bondable conservation investment as defined in RCW  
33 80.28.005(1) if it finds that such designation is in the public  
34 interest.~~

35 ~~(4) The commission shall include in rate base all bondable  
36 conservation investment. The commission shall approve rates for  
37 service by electrical, gas, and water companies at levels sufficient  
38 to recover all of the expenditures of the bondable conservation  
39 investment included in rate base and the costs of equity and debt~~

1 ~~capital associated therewith, including, without limitation, the~~  
2 ~~payment of principal, premium, if any, and interest on conservation~~  
3 ~~bonds.))~~ The rates so determined may be included in general rate  
4 schedules or may be expressed in one or more separate rate schedules.  
5 ~~((The commission shall not revalue bondable conservation investment~~  
6 ~~for rate-making purposes, to determine that revenues required to~~  
7 ~~recover bondable conservation investment and associated equity and~~  
8 ~~debt capital costs are unjust, unreasonable, or in any way impair or~~  
9 ~~reduce the value of conservation investment assets or that would~~  
10 ~~impair the timing or the amount of revenues arising with respect to~~  
11 ~~conservation investment assets that have been pledged to secure~~  
12 ~~conservation bonds.~~

13 ~~(5))~~ (4) Nothing in this chapter precludes the commission from  
14 adopting or continuing other conservation policies and programs  
15 intended to provide incentives for and to encourage ~~((utility))~~  
16 electrical, gas, or water company investment in improving the  
17 efficiency of energy or water end use. However, the policies or  
18 programs shall not impair ~~((conservation investment))~~ rate recovery  
19 assets. This chapter is not intended to be an exclusive or mandatory  
20 approach to conservation programs for electrical, gas, and water  
21 companies, and no such company is obligated to file conservation  
22 service tariffs under this chapter, to apply to the commission for a  
23 determination that conservation costs constitute bondable  
24 ~~((conservation investment))~~ rate recovery expenditures within the  
25 meaning of this chapter, or to issue ~~((conservation))~~ rate recovery  
26 bonds.

27 ~~((6))~~ (5)(a) If a customer of an electrical, gas, or water  
28 company for whose benefit the company made expenditures for  
29 conservation measures or services ceases to be a customer of such  
30 company for one or more of the following reasons, the commission may  
31 require that the portion of such ~~((conservation))~~ expenditures that  
32 had been included in rate base but not theretofore recovered in the  
33 rates of such company be removed from the rate base of the company:

34 (i) The customer ceases to be a customer of the ~~((supplier of~~  
35 ~~energy or water))~~ electrical, gas, or water company, and the customer  
36 repays to the company the portion of the ~~((conservation))~~  
37 expenditures made for the benefit of such customer that has not  
38 theretofore been recovered in rates of ~~((the))~~ such company; or

1 (ii) ~~((The))~~ Such company sells its property used to serve such  
2 customer and the customer ceases to be a customer of the company as a  
3 result of such action.

4 (b) An electrical, gas, or water company may include in a  
5 contract for a conservation measure or service, and the commission  
6 may by rule or order require to be included in such contracts, a  
7 provision requiring that, if the customer ceases to be a customer of  
8 that ~~((supplier of energy or water))~~ such company, the customer shall  
9 repay to the company the portion of the conservation expenditures  
10 made for the benefit of such customer that has not theretofore been  
11 recovered in rates of the company.

12 **Sec. 6.** RCW 80.28.306 and 1994 c 268 s 3 are each amended to  
13 read as follows:

14 (1) Electrical, gas, and water companies, or finance  
15 subsidiaries, may ~~((issue conservation bonds))~~, upon approval by the  
16 commission, finance or refinance bondable rate recovery expenditures  
17 as described in RCW 80.28.303. Bonds, notes, certificates of  
18 beneficial interests in a trust, and other evidences of indebtedness  
19 or ownership issued for this purpose are rate recovery bonds for the  
20 purposes of this section.

21 (2) ~~((Electrical))~~ (a) An electrical, gas, ((and)) or water  
22 ((companies, or)) company, finance ((subsidiaries)) subsidiary, or  
23 assignee may ~~((pledge conservation investment))~~ grant a security  
24 interest in rate recovery assets as collateral for ~~((conservation))~~  
25 rate recovery bonds ~~((by obtaining an order of the commission~~  
26 ~~approving an issue of conservation bonds and providing for a security~~  
27 ~~interest in conservation investment assets))~~. A security interest in  
28 ~~((conservation investment))~~ rate recovery assets is ~~((created and~~  
29 ~~perfected only upon entry of an order by the commission approving a~~  
30 ~~contract governing the granting of the security interest and the~~  
31 ~~filing with the department of licensing of a UCC-1 financing~~  
32 ~~statement, showing such pledgor as "debtor" and identifying such~~  
33 ~~conservation investment assets and the bondable conservation~~  
34 ~~investment associated therewith. The security interest is))~~ valid and  
35 enforceable against the debtor and ~~((all))~~ third parties, subject  
36 only to the rights of any third parties holding security interests in  
37 the ~~((conservation investment))~~ rate recovery assets attached and  
38 perfected in the manner described in this ~~((section,))~~ subsection.

1 (b) A security interest in rate recovery assets attaches if  
2 ((value has been)):

3 (i) The secured party, or a financing party that the secured  
4 party represents, has given ((by the purchasers of conservation  
5 bonds. An approved)) value; and

6 (ii) The debtor has signed a security agreement granting the  
7 secured party a security interest in ((conservation investment)) the  
8 rate recovery assets.

9 (c) A valid and enforceable security interest in rate recovery  
10 assets is perfected if: (i) The security interest has attached in the  
11 manner described in (b) of this subsection; and (ii) a financing  
12 statement has been filed in accordance with the requirements of  
13 chapter 62A.9A RCW that identifies the debtor as "debtor," the  
14 secured party as "secured party," and the rate recovery assets  
15 granted as security as the "collateral," and contains a description  
16 in the financing statement that refers to the commission's financing  
17 order creating the rate recovery assets. The financing statement is  
18 deemed sufficient under chapter 62A.9A RCW and all other relevant law  
19 for identifying the rate recovery assets granted as security.

20 (d) A perfected security interest in rate recovery assets is a  
21 continuously perfected security interest ((in all revenues and  
22 proceeds arising with respect to the associated bondable conservation  
23 investment)), whether or not ((such)) the related revenues have  
24 accrued((. Upon such approval, the priority of such security interest  
25 shall be as set forth in)) or the ((contract governing the  
26 conservation bonds. Conservation investment)) related rate recovery  
27 charges have been charged, billed, or collected. Rate recovery assets  
28 constitute a presently existing, fully vested property right for the  
29 purposes of contracts securing ((conservation)) the rate recovery  
30 bonds whether or not the related revenues have accrued or the related  
31 rate recovery charges have been charged, billed, or collected.  
32 Multiple security interests in the same rate recovery assets shall  
33 rank according to priority in time of perfection.

34 ((3) The) (e) Subject to the terms of the security agreement  
35 covering the rate recovery assets, the relative priority of a  
36 security interest created or perfected under this section is not  
37 ((defeated or)) adversely affected by: (i) Any later modification of  
38 the financing order or rate recovery assets; or (ii) the commingling  
39 of ((revenues arising with respect to conservation investment))  
40 proceeds of rate recovery assets with other ((funds of the debtor.

1 ~~The holders of conservation bonds shall have a perfected security~~  
2 ~~interest in all cash and deposit accounts of the debtor in which~~  
3 ~~revenues arising with respect to conservation investment assets~~  
4 ~~pledged to such holders have been commingled with other funds, but~~  
5 ~~such perfected security interest is limited to an amount not greater~~  
6 ~~than the amount of such revenues received by the debtor within twelve~~  
7 ~~months before (a) any default under the conservation bonds held by~~  
8 ~~the holders or (b) the institution of insolvency proceedings by or~~  
9 ~~against the debtor, less payments from such revenues to the holders~~  
10 ~~during such twelve-month period. If an event of default occurs under~~  
11 ~~an approved contract governing conservation bonds, the holders of~~  
12 ~~conservation bonds or their authorized representatives, as secured~~  
13 ~~parties, may foreclose or otherwise enforce the security interest in~~  
14 ~~the conservation investment assets securing the conservation bonds,~~  
15 ~~subject to the rights of any third parties holding prior security~~  
16 ~~interests in the conservation investment assets perfected in the~~  
17 ~~manner provided in this section.)~~) moneys.

18 (3) (a) A transfer of rate recovery assets to an assignee is  
19 perfected against all third parties if a notice of the transfer, by  
20 means of a financial statement:

21 (i) Is filed in accordance with the requirements of chapter  
22 62A.9A RCW;

23 (ii) Specifies that the notice of transfer is filed to provide  
24 notice of the transfer of the rate recovery assets from the  
25 transferor to the assignee;

26 (iii) Identifies the transferor as "debtor," the assignee as  
27 "secured party," and the rate recovery asset as "collateral"; and

28 (iv) Contains a description that refers to the commission's  
29 financing order that created the rate recovery assets.

30 (b) A notice of transfer that is filed in accordance with the  
31 requirements under (a) of this subsection shall be deemed sufficient  
32 under chapter 62A.9A RCW and all other relevant laws for identifying  
33 the rate recovery assets and for providing notice that the rate  
34 recovery assets have been transferred to the assignee.

35 (c) A transfer is perfected against third parties on the date a  
36 notice of transfer is filed.

37 (d) A transfer of rate recovery assets to a financing subsidiary  
38 that is perfected under this subsection is free and clear of all  
39 claims, security interests, liens, and encumbrances of the

1 transferring electrical, gas, or water company, except for any prior  
2 security interest perfected under subsection (2) of this section.

3 (e) The priority of a transfer that is perfected under this  
4 subsection is not adversely affected by:

5 (i) Any later modification of the financing order or rate  
6 recovery assets; or

7 (ii) The commingling of proceeds of rate recovery assets.

8 (4) (a) When proceeds of rate recovery assets are transferred to a  
9 segregated account for an assignee or secured party, any lien or  
10 security interest that may apply to those proceeds, other than a  
11 security interest perfected under subsection (2) of this section, is  
12 automatically terminated, without the need for further notice, act,  
13 or evidence.

14 (b) Proceeds from rate recovery assets shall be held in trust for  
15 an assignee or secured party until the proceeds have been transferred  
16 to the assignee or secured party.

17 (c) Any adjustment in rate recovery charges does not affect the  
18 validity, perfection, or priority of a security interest in or the  
19 transfer of rate recovery assets.

20 (5) (a) The rights and remedies of a secured party in enforcing a  
21 security interest in rate recovery assets do not include and are  
22 without recourse to any electrical, gas, or water company asset  
23 except for the rate recovery assets, even if the rate recovery assets  
24 are commingled with other assets.

25 (b) If an electrical, gas, or water company or finance subsidiary  
26 defaults on a required payment with respect to rate recovery bonds, a  
27 secured party or secured party's representatives may apply to the  
28 commission for relief. Upon application by (~~the holders of [or]~~  
29 ~~their~~)) a secured party or secured party's representatives, the  
30 commission shall order, without limiting (~~their~~) other remedies of  
31 the secured party or secured party's representatives, (~~the~~  
32 ~~commission shall order~~) the sequestration and payment to the  
33 (~~holders or their~~) secured party or secured party's representatives  
34 of (~~revenues arising with respect to~~) the (~~conservation~~  
35 ~~investment~~) proceeds of the rate recovery assets (~~pledged to such~~  
36 ~~holders~~). (~~Any such~~)

37 (c) The interest of an assignee or financing party in rate  
38 recovery assets is not subject to setoff, counterclaim, surcharge, or  
39 defense by the electrical, gas, or water company or any other person  
40 in connection with a bankruptcy, reorganization, or insolvency



1 proceeding. However, any surplus in excess of amounts necessary to  
2 pay principal, premium, if any, interest, and other amounts due with  
3 respect to the rate recovery bonds and associated financing costs,  
4 including enforcement costs, with respect to the security agreement  
5 shall be remitted to the debtor electrical, gas, or water company;  
6 debtor finance subsidiary; or other debtor assignee.

7 (d) The commission's financing order and any order issued under  
8 (b) of this subsection shall remain in full force and effect  
9 notwithstanding any bankruptcy, reorganization, or other insolvency  
10 proceedings with respect to ((the)) an electrical, gas, or water  
11 company debtor, or transferor with respect to rate recovery assets.  
12 ~~((Any surplus in excess of amounts necessary to pay principal,~~  
13 ~~premium, if any, interest, and expenses arising under the contract~~  
14 ~~governing the conservation bonds shall be remitted to the debtor~~  
15 ~~electrical, gas, or water company or the debtor finance subsidiary.~~

16 ~~(4))~~ (6) The granting, perfection, and enforcement of security  
17 interests in ((conservation investment)) rate recovery assets to  
18 secure ((conservation)) rate recovery bonds is ((governed by this  
19 chapter rather than by)) subject to chapter 62A.9A RCW, except that  
20 when a provision in chapter 62A.9A RCW comes in conflict with a  
21 provision in this section, the provision in this section shall  
22 control.

23 ~~((5))~~ (7) A transfer of ((conservation investment)) rate  
24 recovery assets by an electrical, gas, or water company to a finance  
25 subsidiary or other assignee, which such parties have in the  
26 governing documentation expressly stated to be a sale or other  
27 absolute transfer, in a transaction approved in ((an)) a financing  
28 order ((issued by the commission and in connection with the issuance  
29 by such finance subsidiary of conservation bonds)), shall be treated  
30 as a true sale, and not as a pledge or other financing, of such  
31 ((conservation investment)) rate recovery assets. According the  
32 holders of ((conservation)) rate recovery bonds a preferred right to  
33 revenues of the electrical, gas, or water company, or the provision  
34 by such company of other credit enhancement with respect to  
35 ((conservation)) rate recovery bonds, does not impair or negate the  
36 characterization of any such transfer as a true sale.

37 ~~((6))~~ (8) Any successor to an electrical, gas, or water company  
38 pursuant to any bankruptcy, reorganization, or other insolvency  
39 proceeding shall perform and satisfy all obligations of the company  
40 under an approved contract governing ((conservation)) rate recovery

1 bonds, in the same manner and to the same extent as was required of  
2 such company before any such proceeding, including, without  
3 limitation, billing, collecting, and paying to the bondholders or  
4 their representatives revenues arising with respect to the  
5 ((conservation investment)) rate recovery assets pledged to secure  
6 the ((conservation)) rate recovery bonds.

7 (9) Except for enforcement permitted under the laws of another  
8 state, the laws of this state shall govern the creation, validity,  
9 enforceability, attachment, perfection, priority, and exercise of  
10 remedies with respect to the creation or transfer of a security  
11 interest in a rate recovery asset.

12 **Sec. 7.** RCW 80.28.309 and 1994 c 268 s 4 are each amended to  
13 read as follows:

14 (1) Costs incurred before ((June 9, 1994,)) the effective date of  
15 this section by electrical, gas, or water companies with respect to  
16 events described in RCW 80.28.005(3)(a) or energy or water  
17 conservation measures and services ((intended to improve the  
18 efficiency of energy or water end use)) described in RCW  
19 80.28.005(3)(b) shall constitute bondable ((conservation investment))  
20 rate recovery expenditures for purposes of RCW 80.28.005, 80.28.303,  
21 80.28.306, and this section, if:

22 (a) The commission has previously issued a rate order authorizing  
23 the inclusion of such costs in rate base; and

24 (b) The commission authorizes the issuance of ((conservation))  
25 rate recovery bonds secured by ((conservation investment)) rate  
26 recovery assets associated with such costs.

27 (2) If costs incurred before ((June 9, 1994,)) the effective date  
28 of this section by electrical, gas, or water companies with respect  
29 to events described in RCW 80.28.005(3)(a) or energy or water  
30 conservation measures ((intended to improve the efficiency of energy  
31 or water end use)) described in RCW 80.28.005(3)(b) have not  
32 previously been considered by the commission for inclusion in rate  
33 base, an electrical, gas, or water company may apply to the  
34 commission for approval of such costs. If the commission finds that  
35 the expenditures are ((a)) bondable ((conservation investment)) rate  
36 recovery expenditures, the commission shall by order designate such  
37 expenditures as bondable ((conservation investment)) rate recovery  
38 expenditures, which shall be subject to RCW 80.28.005, 80.28.303,  
39 80.28.306, sections 3 and 4 of this act, and this section.

1       **Sec. 8.** RCW 80.08.140 and 1961 c 14 s 80.08.140 are each amended  
2 to read as follows:

3       No provision of this chapter, RCW 80.28.005, 80.28.303,  
4 80.28.306, 80.28.309, or section 3 or 4 of this act, and no deed or  
5 act done or performed under or in connection therewith, shall be held  
6 or construed to obligate the state of Washington or any agency,  
7 instrumentality, political subdivision, or local government thereof  
8 to pay or guarantee, in any manner whatsoever, any stock or stock  
9 certificate or other evidence of interest or ownership, or bond, note  
10 or other evidence of indebtedness, authorized, issued or executed  
11 under the provisions of this chapter, RCW 80.28.005, 80.28.303,  
12 80.28.306, 80.28.309, or section 3 or 4 of this act.

13       NEW SECTION. **Sec. 9.** A new section is added to chapter 80.28  
14 RCW to read as follows:

15       If any provision of sections 1, 3, 4, and 9 of this act or the  
16 amendments to RCW 80.08.140, 80.28.005, 80.28.303, 80.28.306, and  
17 80.28.309 by sections 2, 5, 6, 7, and 8 of this act is determined to  
18 be invalid, or is invalidated, superseded, replaced, repealed, or  
19 expired, such determination or occurrence does not affect the  
20 validity of any action allowed under sections 1, 3, 4, and 9 of this  
21 act or the amendments to RCW 80.08.140, 80.28.005, 80.28.303,  
22 80.28.306, and 80.28.309 by sections 2, 5, 6, 7, and 8 of this act  
23 and taken in good faith and pursuant to a financing order issued  
24 prior to such determination or occurrence.

25       NEW SECTION. **Sec. 10.** Except to the extent required by section  
26 7 of this act, this act applies prospectively only and not  
27 retroactively. Nothing in this act shall impair or affect the  
28 validity of any conservation bonds issued under RCW 80.28.303,  
29 80.28.306, and 80.28.309 as those sections existed prior to the  
30 effective date of this section. Conservation bonds issued under those  
31 sections prior to the effective date of this section shall continue  
32 to be governed by the provisions of such sections as they existed at  
33 the time such conservation bonds were issued.

34       NEW SECTION. **Sec. 11.** This act is necessary for the immediate  
35 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes  
2 effect immediately.

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