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HOUSE BILL 2290

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State of Washington

55th Legislature

1997 Regular Session

By Representative Morris

Read first time . Referred to Committee on .

1 AN ACT Relating to restructuring Washington state electric  
2 utilities and opening the electricity market to retail competition;  
3 amending RCW 80.12.020, 80.12.040, 80.24.010, 80.28.020, and 80.28.050;  
4 reenacting and amending RCW 42.17.310; adding a new section to chapter  
5 41.06 RCW; adding a new chapter to Title 80 RCW; and creating a new  
6 section.

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

8 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature  
9 finds that:

10 (a) The electric utility industry is undergoing fundamental change.  
11 This change is in part due to federal legislation and regulatory  
12 decisions requiring utilities and other owners of transmission lines to  
13 provide nondiscriminatory access to the transmission system, and to  
14 legislation and programs in other states to open retail electricity  
15 markets to competition.

16 (b) Currently, few Washington citizens can choose their electricity  
17 service providers. The interests of citizens will be served by having  
18 a choice of electric services and energy providers, if basic safeguards  
19 relating to consumer protection and access are met, and if investments

1 that preserve the reliability of the electric system and protect the  
2 environment are not undermined.

3 (c) The transition to a competitive retail electricity market will  
4 be significant. At a minimum, active oversight is essential:

5 (i) To facilitate and encourage the development of meaningful  
6 market access for all consumers and prevent unwarranted cost shifts  
7 among consumer classes;

8 (ii) To ensure efficient use and reliable operation of transmission  
9 and distribution facilities;

10 (iii) To allow utilities a fair recovery for previously and  
11 prudently incurred investments that are both unmitigable and no longer  
12 economic as a direct result of implementation of this chapter; and

13 (iv) To ensure minimum investment standards are met for  
14 conservation, renewable resources, energy services to low-income  
15 citizens, and other public purposes; to ensure such investments are  
16 funded in a competitively neutral manner; and to ensure that a viable  
17 funding mechanism will provide ongoing adequate investment in public  
18 purposes.

19 (2) The legislature intends to restructure the retail market for  
20 electricity in the state of Washington. In so doing, the legislature  
21 intends to:

22 (a) Provide for three means by which customers can purchase  
23 electric service and products: Through a voluntary power pool; through  
24 an electric utility, marketer, broker, or aggregator; or directly from  
25 an electricity generator;

26 (b) Provide for the creation of a board to oversee the transition  
27 to a competitive retail electricity market; and

28 (c) Provide for the creation or designation of an independent  
29 operator of the transmission system.

30 NEW SECTION. **Sec. 2.** The definitions in this section apply  
31 throughout this chapter unless the context clearly requires otherwise.

32 (1) "Aggregator" means an entity that combines retail electric  
33 customers into a group for the purpose of purchasing electricity and  
34 related services.

35 (2) "Broker" means an entity that arranges the sale and purchase of  
36 electricity or related services between buyers and sellers, but does  
37 not take title to any of the electricity sold.

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

1 (4) "Consumer-owned utility" means a municipal electric utility  
2 formed under Title 35 RCW, an electric cooperative formed under chapter  
3 23.86 RCW, a mutual corporation or association formed under chapter  
4 24.06 RCW that sells electricity to retail electric customers, a public  
5 utility district formed under Title 54 RCW that sells electricity to  
6 retail electric customers, or an irrigation district formed under  
7 chapter 87.03 RCW that sells electricity to retail electric customers.

8 (5) "Electrical company" means a company owned by investors that  
9 meets the definition of RCW 80.04.010.

10 (6) "Electric utility" means any electrical company or consumer-  
11 owned utility that is engaged in the business of distributing  
12 electricity to retail electric customers in the state.

13 (7) "Electricity" means electric energy, measured in kilowatt  
14 hours, or electric capacity, measured in kilowatts.

15 (8) "Electricity service supplier" means any person or entity that  
16 sells electricity to more than one retail electric customer, including  
17 but not limited to electric utilities, aggregators, marketers, brokers,  
18 generators or holders of contract rights to electricity (other than  
19 marketers) that are willing to sell electricity directly to consumers,  
20 the Northwest power exchange, independent power producers, or other  
21 municipal or state authorities.

22 (9) "Independent system operator" means the independent system  
23 operator designated or established by the oversight board, as provided  
24 in section 4 of this act.

25 (10) "Marketer" means any entity that buys electricity or related  
26 services then resells the electricity or services either at wholesale  
27 or to an end-use customer.

28 (11) "Northwest power exchange" or "exchange" means the voluntary  
29 power pool created in section 15 of this act.

30 (12) "Oversight board" means the oversight board created in section  
31 3 of this act.

32 (13) "Retail electric customer" means any person or entity,  
33 including but not limited to a residential, commercial, and industrial  
34 consumer, that purchases electricity for ultimate consumption and not  
35 for resale.

36 (14) "State" means the state of Washington.

37 (15) "Subscription period" means the time when a retail electric  
38 customer is a customer of the Northwest power exchange, between the  
39 ballot periods provided for in section 17 of this act.

1 (16) "Transition period" means the period beginning July 1, 1999,  
2 and ending no later than June 30, 2009.

3 (17) "Uneconomic utility investment" means generating assets,  
4 conservation investments, and contractual obligations to purchase or  
5 sell electricity that were entered into in good faith by an electric  
6 utility before December 13, 1995, and that were prudent at the time the  
7 obligations were assumed, but that are no longer economic as a direct  
8 result of implementation of this chapter. "Uneconomic utility  
9 investment" does not include costs or expenses disallowed by the  
10 commission in a prudence review or other proceeding, but only to the  
11 extent of such a disallowance, nor does it include fines or penalties  
12 as authorized by this chapter or by another statute.

13 NEW SECTION. **Sec. 3.** OVERSIGHT BOARD CREATED. To ensure that the  
14 interests of all Washington citizens are served by the development of  
15 a competitive retail electricity market, an oversight board is hereby  
16 created.

17 (1) The oversight board shall consist of five members: One  
18 appointed by the majority leader of the senate, one appointed by the  
19 minority leader of the senate, one appointed by the speaker of the  
20 house of representatives, one appointed by the minority leader of the  
21 house of representatives, and one appointed by the governor. All board  
22 members shall be Washington residents and electricity ratepayers. No  
23 member shall be a legislator.

24 (2) Oversight board members shall serve three-year terms with no  
25 limit on reappointment. Of the initial board, one member appointed by  
26 the senate majority leader and one member appointed by the speaker of  
27 the house of representatives shall serve one-year terms; the member  
28 appointed by the governor shall serve a two-year term; and the  
29 remaining members appointed by the senate majority leader and speaker  
30 of the house of representatives shall serve three-year terms.

31 (3) For attending meetings of the board or for attending to other  
32 business of the board, members shall be compensated in accordance with  
33 RCW 43.03.250 and shall be reimbursed for travel expenses in accordance  
34 with RCW 43.03.050 and 43.03.060.

35 (4) The commission shall provide staff and administrative support  
36 to the oversight board.

1        NEW SECTION.    **Sec. 4.**    RESPONSIBILITIES OF OVERSIGHT BOARD.    The

2 oversight board shall have the following responsibilities:

3        (1) To designate or establish, and to oversee, the independent  
4 system operator, the responsibilities of which are described in  
5 sections 7 through 9 of this act;

6        (2) To oversee the Northwest power exchange established in section  
7 15 of this act;

8        (3) To establish eligibility criteria for members of the governing  
9 boards of the independent system operator and for members of the  
10 Northwest power exchange, to determine terms and other conditions for  
11 serving on those governing boards, and to appoint the members of both  
12 governing boards within six months of the effective date of this act.  
13 In fulfilling its obligations under this subsection, the oversight  
14 board shall provide for compensation and reimbursement of expenses for  
15 members of both governing boards. Once the independent system operator  
16 begins collecting charges for transmission, members of the governing  
17 board shall be compensated or reimbursed from revenues of the  
18 independent system operator. Once the Northwest power exchange begins  
19 selling electricity, members of the governing board shall be  
20 compensated or reimbursed from revenues of the exchange;

21        (4) To serve as an appeals board for decisions of the independent  
22 system operator governing board;

23        (5) To arrange for the preparation and mailing of a ballot to all  
24 retail electric customers in the state, as required under section 17 of  
25 this act, so that customers may choose their electricity service  
26 suppliers. The oversight board shall prescribe the kind of information  
27 that may be included with the ballot. In addition, the oversight board  
28 shall establish a procedure under which every customer has the  
29 opportunity, periodically at an accelerated rate, to choose a different  
30 electricity service provider. The oversight board shall determine  
31 whether customers of the Northwest power exchange who select  
32 alternative electricity service suppliers before the next ballot period  
33 will be liable for unmitigable costs incurred by the exchange in  
34 anticipation of serving those customers during the time remaining until  
35 the next ballot period;

36        (6) To complete its additional responsibilities and report to the  
37 legislature as required under section 5 of this act; and

38        (7) To perform other functions necessary to carry out the purposes  
39 of chapter . . . , Laws of 1997 (this act).

1        NEW SECTION.    **Sec. 5.**    DETERMINATIONS AND REPORT BY OVERSIGHT

2 BOARD. (1) With the assistance of the commission, the oversight board  
3 shall determine the following:

4        (a) Appropriate jurisdictional boundaries between the independent  
5 system operator and owners of distribution facilities; definitions for  
6 generation, transmission, and distribution assets, and other relevant  
7 terms; and which transmission and distribution facilities are subject  
8 to the exclusive jurisdiction of the state;

9        (b) Appropriate standards for communications between an electricity  
10 service supplier's regulated and unregulated lines of business  
11 including, but not limited to, distribution services and sales of  
12 electricity and related services classified as competitive by the  
13 commission. The commission shall develop recommendations for such  
14 standards and present the recommendations to the oversight board;

15        (c) Appropriate standards for identifying and valuating uneconomic  
16 utility investments. In fulfilling its obligations under this  
17 subsection (1)(c), the oversight board shall determine whether expenses  
18 in mitigating impacts on utility personnel directly and negatively  
19 affected by implementation of chapter . . . , Laws of 1997 (this act)  
20 should be included in the definition of uneconomic utility investments  
21 and shall determine whether and, if so, in what manner, potential  
22 uneconomic investments of the Bonneville power administration should be  
23 identified, valued, recovered, or otherwise provided for in a  
24 restructured electricity industry;

25        (d) Appropriate standards for determining whether an electric  
26 utility has made all reasonable efforts to mitigate its uneconomic  
27 utility investments. Standards for evaluating an electric utility's  
28 efforts to mitigate uneconomic utility investments shall not require  
29 the utility to impair the validity or affect the obligation of a  
30 contract existing on the effective date of this act;

31        (e) The total sum of costs due to unmitigable, uneconomic utility  
32 investments incurred by electric utilities. In fulfilling its  
33 obligations under this subsection (1)(e), the oversight board shall  
34 include federally mandated expenditures for fish mitigation programs as  
35 uneconomic utility investments;

36        (f) The most appropriate nonbypassable mechanism to allow  
37 individual electric utilities to recover, during the transition period,  
38 fifty percent of the amount of those unmitigable uneconomic utility  
39 investments the individual utility incurred. The commission shall make

1 recommendations to the oversight board regarding any legislation  
2 necessary to authorize an electric utility, with commission approval,  
3 to issue bonds, notes, certificates of beneficial interests in trusts,  
4 or other evidences of indebtedness or ownership, that would be secured  
5 by the revenues recovered through the nonbypassable mechanism provided  
6 for in this subsection (1)(f). The recommendations shall take into  
7 account whether some uneconomic utility investments secure existing  
8 bonds, whether the value of uneconomic utility investments should be  
9 adjusted periodically, and any other matter the commission deems  
10 relevant;

11 (g) The specific public purposes that should receive financial  
12 support from the electricity system, and the appropriate level of  
13 funding for each. Regarding renewable resources, the oversight board  
14 shall determine how to allocate funds among new, existing, and emerging  
15 technologies, and how to allocate funds for efforts to develop a  
16 consumer-driven market for renewable generation as described in section  
17 16(2) of this act. The oversight board shall also determine whether  
18 the overall level of funding, or allocation of the funding, should  
19 change over time and, if so, when and in what manner. In fulfilling  
20 its obligations under this subsection (1)(g), the oversight board  
21 initially shall presume a minimum investment, and a proportional  
22 allocation of that investment, consistent with the recommendations in  
23 the final report of the comprehensive review of the Northwest energy  
24 system dated December 12, 1996;

25 (h) The most appropriate means of ensuring adequate funding for  
26 public purposes through a flat-rate, nonbypassable charge;

27 (i) Any statutory changes, beyond those in chapter . . . , Laws of  
28 1997 (this act), that are desirable to protect or educate consumers, or  
29 to ensure reliable service at affordable prices to consumers in  
30 sparsely populated areas of the state;

31 (j) Any statutory changes, beyond those in chapter . . . , Laws of  
32 1997 (this act), that are necessary to carry out the purposes of this  
33 act; and

34 (k) Whether action is necessary to encourage the development of a  
35 market for futures contracts to allow customers to hedge against  
36 fluctuations in electricity prices.

37 (2) The oversight board shall form appropriate advisory committees  
38 composed of market and nonmarket participants to assist it in  
39 fulfilling its obligations under this section including, but not

1 limited to: (a) Addressing jurisdictional issues regarding  
2 transmission and distribution; (b) developing standards for defining,  
3 identifying, valuating, and mitigating uneconomic utility investments;  
4 (c) developing an appropriate, nonbypassable mechanism to allow  
5 recovery for fifty percent of unmitigable uneconomic utility  
6 investments during the transition period; (d) defining, identifying,  
7 and determining the appropriate funding level for public purposes; and  
8 (e) developing an appropriate means of ensuring adequate funding for  
9 public purposes through a flat-rate, nonbypassable charge.

10 (3) By November 1, 1998, the oversight board shall report to the  
11 governor and legislature concerning its findings and activities. The  
12 report shall contain any recommendations the oversight board may have  
13 for further action, including legislation, but shall not contain  
14 proprietary business information of individual utilities, or  
15 information exempt from public disclosure under RCW 42.17.310.

16 NEW SECTION. **Sec. 6.** UNECONOMIC UTILITY INVESTMENTS. (1) Each  
17 electric utility shall provide accurate and complete written  
18 documentation of the utility's uneconomic utility investments, the  
19 value of those investments, and the utility's efforts to mitigate those  
20 investments.

21 (2) Using the standards to be developed as provided in section 5 of  
22 this act, the commission shall identify and quantify uneconomic utility  
23 investments for each electric utility, and determine whether the  
24 utility has made all reasonable efforts to mitigate costs attributable  
25 to those uneconomic utility investments.

26 (3) Fifty percent of the costs attributable to unmitigable,  
27 uneconomic utility investments shall be recovered from all customers on  
28 a nonbypassable basis during the transition period. Any costs not  
29 recovered during the transition period shall be the sole responsibility  
30 of the utility.

31 (4) The commission shall facilitate implementation of the  
32 nonbypassable recovery mechanism as determined by the oversight board  
33 under section 5 of this act.

34 NEW SECTION. **Sec. 7.** RESPONSIBILITIES OF INDEPENDENT SYSTEM  
35 OPERATOR. (1) An independent system operator shall ensure efficient  
36 use and reliable operation of the transmission grid consistent with  
37 achievement of planning and operating reserve criteria no less

1 stringent than those established by the Western systems coordinating  
2 council and the North American electric reliability council. The  
3 independent system operator shall be operated on a nonprofit basis.

4 (2) The independent system operator shall participate in all  
5 relevant federal energy regulatory commission proceedings. To the  
6 extent filings at the federal energy regulatory commission are  
7 necessary, the independent system operator shall ensure the filings  
8 request confirmation of the relevant provisions of this chapter and  
9 seek the authority needed to give the independent system operator the  
10 ability to secure generating and transmission resources necessary to  
11 guarantee achievement of planning and operating reserve criteria no  
12 less stringent than those established by the Western systems  
13 coordinating council and the North American electric reliability  
14 council.

15 (3) The independent system operator shall adopt inspection,  
16 maintenance, repair, and replacement standards for the transmission  
17 facilities under its control no later than March 31, 1999. The  
18 standards, which shall be performance or prescriptive standards, or  
19 both, as appropriate, for each substantial type of transmission  
20 equipment or facility, shall provide for high quality, safe, and  
21 reliable service. In adopting its standards, the independent system  
22 operator shall consider: Cost, local geography and weather, applicable  
23 codes, national electric industry practices, sound engineering  
24 judgment, and experience. The independent system operator shall also  
25 adopt standards for reliability and safety during periods of emergency  
26 and disaster. The independent system operator shall require each  
27 transmission facility owner or operator to report annually on its  
28 compliance with the standards. The report shall be made available to  
29 the public.

30 (4) The governing board of the independent system operator may hire  
31 staff to carry out its duties under this chapter. The staff shall be  
32 exempt from the provisions of chapter 41.06 RCW. The commission shall  
33 provide office space for the staff and accounting and administrative  
34 support.

35 (5) The governing board of the independent system operator may form  
36 appropriate technical advisory committees composed of market and  
37 nonmarket participants to advise the independent system operator  
38 governing board on issues including, but not limited to, rules,  
39 protocols, and operating procedures.

1        NEW SECTION.    **Sec. 8.**    OUTAGES.    The independent system operator  
2 shall perform a review following a major outage that affects at least  
3 ten percent of the customers of the entity providing the local  
4 distribution service.    The review shall address the cause of the major  
5 outage, the response time and effectiveness, and whether the  
6 transmission facility owner or operator's operation and maintenance  
7 practices enhanced or undermined the ability to restore service  
8 efficiently and in a timely manner.    If the independent system operator  
9 finds that the operation and maintenance practices of the transmission  
10 facility owner or operator prolonged the response time or were  
11 responsible for the outage, the independent system operator may order  
12 appropriate sanctions, subject to the federal energy regulatory  
13 commission approving that authority, if such approval is necessary.

14        NEW SECTION.    **Sec. 9.**    REPORT BY INDEPENDENT SYSTEM OPERATOR.    The  
15 independent system operator, in consultation with the Washington State  
16 University cooperative extension service, the commission, the Western  
17 systems coordinating council, and concerned regulatory agencies in  
18 other western states, shall, within six months after the federal energy  
19 regulatory commission approval of the independent system operator,  
20 provide a report to the governor and appropriate committees of the  
21 legislature that does the following:

22        (1) Conducts an independent review and assessment of Western  
23 systems coordinating council operating reliability criteria;

24        (2) Quantifies the economic cost of major transmission outages  
25 relating to the Pacific intertie and other important high voltage lines  
26 that carry power both into and from the state;

27        (3) Identifies the range of cost-effective options that would  
28 prevent or mitigate the consequence of major transmission outages;

29        (4) Identifies communication protocols that may be needed to be  
30 established to provide advance warning of incipient problems;

31        (5) Identifies the need for additional generation reserves and  
32 other voltage support equipment, if any, or other resources that may be  
33 necessary to carry out its functions;

34        (6) Identifies transmission capacity additions that may be  
35 necessary at certain times of the year or under certain conditions;

36        (7) Assesses the adequacy of current and prospective institutional  
37 provisions for the maintenance of reliability;

1 (8) Identifies mechanisms to enforce transmission right of way  
2 maintenance; and

3 (9) Contains recommendations regarding cost-effective improvements  
4 to the reliability of electric system.

5 NEW SECTION. **Sec. 10.** RELIABILITY OF THE DISTRIBUTION SYSTEM.

6 (1) The commission shall ensure that distribution facilities needed to  
7 maintain the reliability of the electric supply remain available and  
8 operational, consistent with maintaining open competition and avoiding  
9 an over-concentration of market power. To determine whether the  
10 facility needs to remain available and operational, the commission  
11 shall utilize standards that are no less stringent than the Western  
12 systems coordinating council and North American electric reliability  
13 council standards for planning reserve criteria.

14 (2) The commission shall adopt inspection, maintenance, repair, and  
15 replacement standards for the distribution systems of electric  
16 utilities no later than March 31, 1999. The standards, which shall be  
17 performance or prescriptive standards, or both, as appropriate, for  
18 each substantial type of distribution equipment or facility, shall  
19 provide for high quality, safe, and reliable service.

20 (3) In setting its standards, the commission shall consider: Cost,  
21 local geography and weather, applicable codes, national electric  
22 industry practices, sound engineering judgment, and experience. The  
23 commission shall also adopt standards for operation, reliability, and  
24 safety during periods of emergency and disaster. The commission shall  
25 require each electric utility to report annually on its compliance with  
26 the standards. That report shall be made available to the public.

27 (4) The commission shall conduct a review to determine whether the  
28 standards prescribed in this section have been met. If the commission  
29 finds that the standards have not been met, the commission may order  
30 appropriate sanctions, including penalties in the form of rate  
31 reductions or monetary fines. The review shall be performed after  
32 every major outage. Any money collected pursuant to this subsection  
33 shall be used to provide additional funding for the public purposes  
34 identified by the oversight board under section 5 of this act.

35 NEW SECTION. **Sec. 11.** NONDISCRIMINATION IN DISTRIBUTION. After  
36 July 1, 1999, an electric utility shall: (1) Provide to other  
37 electricity service suppliers comparable access to information about

1 its distribution facilities, metering, and aggregate loads, as it would  
2 to its own divisions or affiliates; and (2) refrain from granting to  
3 its generating or transmission operations any access to or information  
4 about its distribution facilities that is not provided to other  
5 electricity service suppliers.

6 NEW SECTION. **Sec. 12.** DISTRIBUTION RATES. (1) Every electric  
7 utility shall offer unbundled rates, terms, and conditions for the use  
8 of its distribution facilities and for ancillary services.

9 (2) Every electric utility shall submit periodic reports to the  
10 commission on costs the utility incurred in maintaining, upgrading, or  
11 expanding its distribution facilities.

12 (3) The commission shall set rates for the use of distribution  
13 facilities and ancillary services. Subject to the limitation set forth  
14 in this subsection (3), in setting distribution rates, the commission  
15 shall allow a nine percent rate of return to electrical companies, and  
16 costs only to consumer-owned utilities. Nothing in this section  
17 requires or authorizes the commission to set rates for the use of  
18 distribution facilities and ancillary services that would impair the  
19 ability of an electric utility to perform fully its covenants with  
20 holders from time to time of its bonds, notes, or other evidence of  
21 indebtedness, or to perform fully its covenants contained in agreements  
22 that secure the payment of bonds, notes, or other evidence of  
23 indebtedness of any other municipal corporation or joint operating  
24 agency.

25 (4) The commission shall ensure that an electric utility's  
26 distribution costs, including but not limited to overhead attributable  
27 to distribution facilities and ancillary services, are allocated  
28 accurately among the various classes of customers without shifting  
29 costs from one class to another.

30 NEW SECTION. **Sec. 13.** SEPARATION OF ASSETS AND OPERATIONS. (1)  
31 No later than January 1, 1999, every electric utility shall  
32 administratively and functionally separate its generation,  
33 transmission, distribution, and other assets and operations to  
34 accurately allocate the costs of utility functions, and to allow for  
35 fair and accurate pricing of unbundled services. Communications  
36 between an electric utility's regulated and unregulated lines of  
37 business, including but not limited to distribution services and sales

1 of electricity and related services classified as competitive by the  
2 commission, shall comply with the standards developed under section  
3 5(1)(b) of this act.

4 (2) After July 1, 1999, the commission shall not set the rates,  
5 terms, or conditions for the sale of electricity by electrical  
6 utilities. An electricity service supplier that owns no generating  
7 assets or distribution facilities in the state shall not be considered  
8 an electrical company or a public service company under Title 80 RCW,  
9 but shall be subject to the requirements of sections 17 through 21 of  
10 this act.

11 NEW SECTION. **Sec. 14.** SEPARATE ACCOUNTS. (1) Any electric  
12 utility engaged in selling electricity in the state, or related  
13 services that have been classified as competitive by the commission,  
14 shall keep separate accounts, as prescribed by the commission, of the  
15 utility's capital employed in such business, and of the utility's  
16 revenues and operating expenses arising from such business.

17 (2) For the purpose of setting distribution rates: (a) The capital  
18 employed in selling electricity or related competitive services shall  
19 not constitute a part of the fair value of the electric utility's  
20 property; and (b) the revenues from and operating expenses of such  
21 business shall not constitute a part of the operating expenses and  
22 revenues of the electric utility.

23 NEW SECTION. **Sec. 15.** NORTHWEST POWER EXCHANGE CREATED. An  
24 independent, voluntary power pool, to be known as the Northwest power  
25 exchange, is hereby created. The exchange shall commence selling  
26 electricity on July 1, 1999, and cease selling electricity within six  
27 months of the time that less than ten percent of the electricity  
28 purchased in the state is purchased from the exchange. The exchange  
29 shall be governed by a board meeting the criteria established by the  
30 oversight board created under section 3 of this act. The exchange  
31 shall not own any electricity-generating resources.

32 NEW SECTION. **Sec. 16.** RESPONSIBILITIES OF THE NORTHWEST POWER  
33 EXCHANGE. (1) The Northwest power exchange shall provide an efficient  
34 competitive auction, open to all electricity suppliers on a  
35 nondiscriminatory basis, through which the exchange shall purchase  
36 power for resale to retail electric customers.

1           (2) Initially, one percent of the electricity purchased for resale  
2 by the exchange shall be from renewable resource technologies,  
3 including, but not limited to, facilities that use the following energy  
4 sources to generate electricity: Solar, wind, geothermal, solid fuel  
5 biomass, whole waste tire combustion, municipal solid waste that does  
6 not consist primarily of products originally manufactured from fossil  
7 fuels, gas from anaerobic digestion of biological wastes, and  
8 hydropower with a generating capacity of thirty megawatts or less. The  
9 proportion of electricity the exchange purchases from renewable  
10 resource technologies shall increase over time, at a rate and in  
11 amounts to be determined by the Northwest power exchange governing  
12 board in consultation with the oversight board created under section 3  
13 of this act. Electricity from renewable resource technologies shall be  
14 dispatched first.

15           (3) The Northwest power exchange shall provide an efficient  
16 competitive auction, open to all providers of metering services on a  
17 nondiscriminatory basis, through which the exchange shall purchase  
18 metering services on behalf of the retail electric customers of the  
19 exchange, including a mechanism for leveling fluctuations in the cost  
20 of electricity and related services provided for in subsection (6) of  
21 this section.

22           (4) The Northwest power exchange shall provide an efficient  
23 competitive auction, open to all electricity suppliers on a  
24 nondiscriminatory basis, through which the exchange shall purchase the  
25 power necessary to maintain the reliability of the electricity delivery  
26 system, as determined by the independent system operator based on the  
27 exchange's total retail electricity load.

28           (5) The Northwest power exchange shall sell electricity to retail  
29 electric customers at a price sufficient to recover all costs of the  
30 exchange, but shall be operated on a nonprofit basis.

31           (6) Prior to July 1, 1999, the exchange shall develop a means of  
32 leveling fluctuations in the cost of electricity and related services  
33 between ballot periods. The means shall ensure that:

34           (a) During the first year of operation of the exchange, an increase  
35 in the cost to exchange customers for electrical service does not  
36 exceed ten percent above the average state-wide residential rate for  
37 electrical service as of July 1, 1999, adjusted for inflation using the  
38 consumer price index for all urban consumers (CPI-U) published by the

1 United States department of labor bureau of labor statistics, United  
2 States city average, all items; and

3 (b) During subsequent years, an increase in the cost to exchange  
4 customers for electrical service does not exceed ten percent above the  
5 rate charged during the preceding year, adjusted for inflation using  
6 the consumer price index for all urban consumers (CPI-U) published by  
7 the United States department of labor bureau of labor statistics,  
8 United States city average, all items.

9 (7) The governing board of the Northwest power exchange may hire  
10 staff to carry out its duties under this chapter. The staff shall be  
11 exempt from the provisions of chapter 41.06 RCW. The commission shall  
12 provide office space for the staff and accounting and administrative  
13 support.

14 (8) The governing board of the Northwest power exchange may form  
15 appropriate technical advisory committees comprised of market and  
16 nonmarket participants to advise the governing board on relevant  
17 issues.

18 NEW SECTION. **Sec. 17.** BALLOTS. (1) By January 1, 1999, ballots  
19 shall be distributed to all retail electric customers in the state.  
20 Ballots must be returned by March 1, 1999. Beginning January 1, 2000,  
21 as long as the Northwest power exchange exists, customers shall have  
22 the opportunity, periodically at an accelerated rate, to select, in  
23 writing, a different electricity service supplier.

24 (2) Different ballots may be prepared for different classes of  
25 customers. Options listed on a ballot must include all electricity  
26 service suppliers willing to provide the customer's electrical service.

27 (3) Any customer that fails to select an electricity service  
28 supplier by March 1, 1999, shall be a customer of the Northwest power  
29 pool.

30 (4) No one shall authorize a change in electricity service supplier  
31 for any residential or small commercial customer until the consumer has  
32 received an information package fully explaining the nature and effect  
33 of the change and has authorized, in writing, the change.

34 NEW SECTION. **Sec. 18.** AGGREGATION. (1) Aggregation of customer  
35 electrical load is authorized for all customer classes, including, but  
36 not limited to, residential or small commercial customers. Aggregation  
37 may be accomplished by private market aggregators, cities, counties,

1 special districts, or on any other basis made available by market  
2 opportunities and agreed to in writing by individual customers.

3 (2) A public agency that serves as a community aggregator on behalf  
4 of residential customers must offer the opportunity to purchase  
5 electricity to all residential customers within the agency's  
6 jurisdiction.

7 NEW SECTION. **Sec. 19.** CONSUMER INFORMATION. (1) After October 1,  
8 1998, any person or entity that sells electricity to a retail electric  
9 customer shall disclose each component of an electrical bill as  
10 follows:

11 (a) The total charges attributable to the electricity;

12 (b) The total charges attributable to the delivery of the  
13 electricity to the customer;

14 (c) The total charges attributable to public purposes as identified  
15 in section 5 of this act; and

16 (d) The total charges attributable to uneconomic utility  
17 investments identified and quantified as provided under section 6 of  
18 this act.

19 (2) Electricity service suppliers shall provide conspicuous notice  
20 that if a customer elects to purchase electricity from another  
21 supplier, the customer will continue to be liable for payment of the  
22 charges for public purposes and uneconomic utility investments. The  
23 commission may require additional information.

24 (3) Prior to December 1, 1998, the commission, in conjunction with  
25 electric utilities, shall devise and implement a customer education  
26 program to inform consumers of the changes to the electric industry.  
27 The program shall provide information that will assist consumers in  
28 making appropriate choices regarding their electric service. Every  
29 electric utility shall cooperate with the commission in devising and  
30 implementing the consumer education program.

31 NEW SECTION. **Sec. 20.** REGISTRATION PROCEDURES FOR CERTAIN  
32 ELECTRICITY SERVICE SUPPLIERS. (1) Any person or entity that is not an  
33 electric utility conducting business in the state as of January 1,  
34 1999, and that intends to sell electricity after July 1, 1999, to more  
35 than one retail electric customer shall register with the commission  
36 prior to delivering electricity to customers in the state.

1 (2) The registration shall be on a form prescribed by the  
2 commission and shall contain such information as the commission may by  
3 rule require, but must include as a minimum: (a) The name and address  
4 of the person or entity; (b) the name and address of its registered  
5 agent, if any; (c) the name, address, and title of each officer or  
6 director, if any; (d) its most current balance sheet; (e) its latest  
7 annual report, if any; and (f) a description of the services it intends  
8 to offer. Prior to January 1, 1999, the commission shall create a  
9 standard application form for applicants to comply with this section.

10 (3) The commission may require as a precondition to registration  
11 the procurement of a performance bond sufficient to cover any advances  
12 or deposits the applicant may collect from its retail electric  
13 customers, or it may order that such advances or deposits be held in  
14 escrow or trust.

15 (4) The commission may deny registration to any applicant that:

16 (a) Does not provide information required by this section or by  
17 commission rules;

18 (b) Fails to provide a performance bond, if required;

19 (c) Does not possess adequate financial resources to provide the  
20 proposed service;

21 (d) Does not possess adequate technical competency to perform the  
22 proposed service;

23 (e) Does not have adequate ability to respond to customer questions  
24 and complaints; or

25 (f) Does not otherwise meet the requirements of this section.

26 (5) The commission shall take action to approve or issue a notice  
27 of hearing concerning any application for registration within thirty  
28 days after receiving the application. The commission may deny an  
29 application after a hearing.

30 NEW SECTION. **Sec. 21.** CONSUMER PROTECTION. (1) Any electricity  
31 service supplier offering to sell electricity to retail electric  
32 customers shall, at the time of the offering, provide the potential  
33 customer with a written notice describing the price, terms, and  
34 conditions of the service, an explanation of the applicability and  
35 amount of the charges for public purposes and uneconomic utility  
36 investments, and a notice describing the potential customer's right to  
37 rescind the contract. The commission shall assist electricity service  
38 suppliers in developing the notice. The commission may require

1 inclusion of additional information that would be useful to the  
2 customer.

3 (2) A contract to purchase electric service is effective only if in  
4 writing and signed by the customer and electricity service supplier.

5 (3)(a) In addition to any other right to revoke an offer,  
6 residential and small commercial customers have the right to cancel a  
7 contract for electric service until midnight of the third business day  
8 after the day on which the customer signs an agreement or offer to  
9 purchase.

10 (b) Cancellation occurs when the customer gives written notice of  
11 cancellation to the electricity service supplier at the address  
12 specified in the agreement or offer.

13 (c) Notice of cancellation, if given by mail, is effective when  
14 deposited in the mail properly addressed with postage prepaid.

15 (d) Notice of cancellation given by the customer need not take the  
16 particular form as provided in the contract or offer to purchase and,  
17 however expressed in writing, is effective if it indicates the  
18 intention of the customer not to be bound by the contract.

19 (4) A consumer damaged by a violation of this section by an  
20 electricity service supplier is entitled to recover all of the  
21 following: (a) Actual damages; (b) reasonable attorneys' fees and  
22 court costs; (c) exemplary damages, in the amount the court deems  
23 proper, for intentional or willful violations; and (d) equitable relief  
24 as the court deems proper.

25 (5) The rights, remedies, and penalties established by this section  
26 are in addition to the rights, remedies, or penalties established under  
27 any other law.

28 (6) Nothing in this section abrogates any authority of the attorney  
29 general to enforce existing law.

30 **Sec. 22.** RCW 42.17.310 and 1996 c 305 s 2, 1996 c 253 s 302, 1996  
31 c 191 s 88, and 1996 c 80 s 1 are each reenacted and amended to read as  
32 follows:

33 (1) The following are exempt from public inspection and copying:

34 (a) Personal information in any files maintained for students in  
35 public schools, patients or clients of public institutions or public  
36 health agencies, or welfare recipients.

1 (b) Personal information in files maintained for employees,  
2 appointees, or elected officials of any public agency to the extent  
3 that disclosure would violate their right to privacy.

4 (c) Information required of any taxpayer in connection with the  
5 assessment or collection of any tax if the disclosure of the  
6 information to other persons would (i) be prohibited to such persons by  
7 RCW 82.32.330 or (ii) violate the taxpayer's right to privacy or result  
8 in unfair competitive disadvantage to the taxpayer.

9 (d) Specific intelligence information and specific investigative  
10 records compiled by investigative, law enforcement, and penology  
11 agencies, and state agencies vested with the responsibility to  
12 discipline members of any profession, the nondisclosure of which is  
13 essential to effective law enforcement or for the protection of any  
14 person's right to privacy.

15 (e) Information revealing the identity of persons who are witnesses  
16 to or victims of crime or who file complaints with investigative, law  
17 enforcement, or penology agencies, other than the public disclosure  
18 commission, if disclosure would endanger any person's life, physical  
19 safety, or property. If at the time a complaint is filed the  
20 complainant, victim or witness indicates a desire for disclosure or  
21 nondisclosure, such desire shall govern. However, all complaints filed  
22 with the public disclosure commission about any elected official or  
23 candidate for public office must be made in writing and signed by the  
24 complainant under oath.

25 (f) Test questions, scoring keys, and other examination data used  
26 to administer a license, employment, or academic examination.

27 (g) Except as provided by chapter 8.26 RCW, the contents of real  
28 estate appraisals, made for or by any agency relative to the  
29 acquisition or sale of property, until the project or prospective sale  
30 is abandoned or until such time as all of the property has been  
31 acquired or the property to which the sale appraisal relates is sold,  
32 but in no event shall disclosure be denied for more than three years  
33 after the appraisal.

34 (h) Valuable formulae, designs, drawings, and research data  
35 obtained by any agency within five years of the request for disclosure  
36 when disclosure would produce private gain and public loss.

37 (i) Preliminary drafts, notes, recommendations, and intra-agency  
38 memorandums in which opinions are expressed or policies formulated or

1 recommended except that a specific record shall not be exempt when  
2 publicly cited by an agency in connection with any agency action.

3 (j) Records which are relevant to a controversy to which an agency  
4 is a party but which records would not be available to another party  
5 under the rules of pretrial discovery for causes pending in the  
6 superior courts.

7 (k) Records, maps, or other information identifying the location of  
8 archaeological sites in order to avoid the looting or depredation of  
9 such sites.

10 (l) Any library record, the primary purpose of which is to maintain  
11 control of library materials, or to gain access to information, which  
12 discloses or could be used to disclose the identity of a library user.

13 (m) Financial information supplied by or on behalf of a person,  
14 firm, or corporation for the purpose of qualifying to submit a bid or  
15 proposal for (i) a ferry system construction or repair contract as  
16 required by RCW 47.60.680 through 47.60.750 or (ii) highway  
17 construction or improvement as required by RCW 47.28.070.

18 (n) Railroad company contracts filed prior to July 28, 1991, with  
19 the utilities and transportation commission under RCW 81.34.070, except  
20 that the summaries of the contracts are open to public inspection and  
21 copying as otherwise provided by this chapter.

22 (o) Financial and commercial information and records supplied by  
23 private persons pertaining to export services provided pursuant to  
24 chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to  
25 export projects pursuant to RCW 43.23.035.

26 (p) Financial disclosures filed by private vocational schools under  
27 chapters 28B.85 and 28C.10 RCW.

28 (q) Records filed with the utilities and transportation commission  
29 or attorney general under RCW 80.04.095 that a court has determined are  
30 confidential under RCW 80.04.095.

31 (r) Financial and commercial information and records supplied by  
32 businesses or individuals during application for loans or program  
33 services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW,  
34 or during application for economic development loans or program  
35 services provided by any local agency.

36 (s) Membership lists or lists of members or owners of interests of  
37 units in timeshare projects, subdivisions, camping resorts,  
38 condominiums, land developments, or common-interest communities

1 affiliated with such projects, regulated by the department of  
2 licensing, in the files or possession of the department.

3 (t) All applications for public employment, including the names of  
4 applicants, resumes, and other related materials submitted with respect  
5 to an applicant.

6 (u) The residential addresses and residential telephone numbers of  
7 employees or volunteers of a public agency which are held by the agency  
8 in personnel records, employment or volunteer rosters, or mailing lists  
9 of employees or volunteers.

10 (v) The residential addresses and residential telephone numbers of  
11 the customers of a public utility contained in the records or lists  
12 held by the public utility of which they are customers.

13 (w)(i) The federal social security number of individuals governed  
14 under chapter 18.130 RCW maintained in the files of the department of  
15 health, except this exemption does not apply to requests made directly  
16 to the department from federal, state, and local agencies of  
17 government, and national and state licensing, credentialing,  
18 investigatory, disciplinary, and examination organizations; (ii) the  
19 current residential address and current residential telephone number of  
20 a health care provider governed under chapter 18.130 RCW maintained in  
21 the files of the department, if the provider requests that this  
22 information be withheld from public inspection and copying, and  
23 provides to the department an accurate alternate or business address  
24 and business telephone number. On or after January 1, 1995, the  
25 current residential address and residential telephone number of a  
26 health care provider governed under RCW 18.130.140 maintained in the  
27 files of the department shall automatically be withheld from public  
28 inspection and copying unless the provider specifically requests the  
29 information be released, and except as provided for under RCW  
30 42.17.260(9).

31 (x) Information obtained by the board of pharmacy as provided in  
32 RCW 69.45.090.

33 (y) Information obtained by the board of pharmacy or the department  
34 of health and its representatives as provided in RCW 69.41.044,  
35 69.41.280, and 18.64.420.

36 (z) Financial information, business plans, examination reports, and  
37 any information produced or obtained in evaluating or examining a  
38 business and industrial development corporation organized or seeking  
39 certification under chapter 31.24 RCW.

1 (aa) Financial and commercial information supplied to the state  
2 investment board by any person when the information relates to the  
3 investment of public trust or retirement funds and when disclosure  
4 would result in loss to such funds or in private loss to the providers  
5 of this information.

6 (bb) Financial and valuable trade information under RCW 51.36.120.

7 (cc) Client records maintained by an agency that is a domestic  
8 violence program as defined in RCW 70.123.020 or 70.123.075 or a rape  
9 crisis center as defined in RCW 70.125.030.

10 (dd) Information that identifies a person who, while an agency  
11 employee: (i) Seeks advice, under an informal process established by  
12 the employing agency, in order to ascertain his or her rights in  
13 connection with a possible unfair practice under chapter 49.60 RCW  
14 against the person; and (ii) requests his or her identity or any  
15 identifying information not be disclosed.

16 (ee) Investigative records compiled by an employing agency  
17 conducting a current investigation of a possible unfair practice under  
18 chapter 49.60 RCW or of a possible violation of other federal, state,  
19 or local laws prohibiting discrimination in employment.

20 (ff) Business related information protected from public inspection  
21 and copying under RCW 15.86.110.

22 (gg) Financial, commercial, operations, and technical and research  
23 information and data submitted to or obtained by the clean Washington  
24 center in applications for, or delivery of, program services under  
25 chapter 70.95H RCW.

26 (hh) Information and documents created specifically for, and  
27 collected and maintained by a quality improvement committee pursuant to  
28 RCW 43.70.510, regardless of which agency is in possession of the  
29 information and documents.

30 (ii) Personal information in files maintained in a data base  
31 created under RCW 43.07.360.

32 (jj) Customer-usage records of an agency that distributes  
33 electricity to retail electric consumers.

34 (kk) Financial or commercial information furnished to or developed  
35 by an agency as part of a proposal, bid, or negotiation for electricity  
36 or related services.

37 (2) Except for information described in subsection (1)(c)(i) of  
38 this section and confidential income data exempted from public  
39 inspection pursuant to RCW 84.40.020, the exemptions of this section

1 are inapplicable to the extent that information, the disclosure of  
2 which would violate personal privacy or vital governmental interests,  
3 can be deleted from the specific records sought. No exemption may be  
4 construed to permit the nondisclosure of statistical information not  
5 descriptive of any readily identifiable person or persons.

6 (3) Inspection or copying of any specific records exempt under the  
7 provisions of this section may be permitted if the superior court in  
8 the county in which the record is maintained finds, after a hearing  
9 with notice thereof to every person in interest and the agency, that  
10 the exemption of such records is clearly unnecessary to protect any  
11 individual's right of privacy or any vital governmental function.

12 (4) Agency responses refusing, in whole or in part, inspection of  
13 any public record shall include a statement of the specific exemption  
14 authorizing the withholding of the record (or part) and a brief  
15 explanation of how the exemption applies to the record withheld.

16 **Sec. 23.** RCW 80.12.020 and 1981 c 117 s 1 are each amended to read  
17 as follows:

18 No public service company shall sell, lease, assign or otherwise  
19 dispose of the whole or any part of its franchises, properties or  
20 facilities whatsoever, which are necessary or useful in the performance  
21 of its duties to the public, and no public service company shall, by  
22 any means whatsoever, directly or indirectly, merge or consolidate any  
23 of its franchises, properties or facilities with any other public  
24 service company, without having secured from the commission an order  
25 authorizing it so to do: PROVIDED, That this section shall not apply  
26 to any sale, lease, assignment or other disposal of such franchises,  
27 properties or facilities to a special purpose district as defined in  
28 RCW 36.96.010, city, county, or town.

29 After July 1, 1999, this section does not apply to the generating  
30 assets of any electrical company.

31 **Sec. 24.** RCW 80.12.040 and 1961 c 14 s 80.12.040 are each amended  
32 to read as follows:

33 No public service company shall, directly or indirectly, purchase,  
34 acquire, or become the owner of any of the franchises, properties,  
35 facilities, capital stocks or bonds of any other public service company  
36 unless authorized so to do by the commission. Nothing contained in  
37 this chapter shall prevent the holding of stocks or other securities

1 heretofore lawfully acquired or prohibit, upon the surrender or  
2 exchange of said stocks or other securities pursuant to a  
3 reorganization plan, the purchase, acquisition, taking or holding by  
4 the owner of a proportionate amount of the stocks or other securities  
5 of any new corporation organized to take over at foreclosure or other  
6 sale, the property of the corporation the stocks or securities of which  
7 have been thus surrendered or exchanged. Any contract by any public  
8 service company for the purchase, acquisition, assignment or transfer  
9 to it of any of the stocks or other securities of any other public  
10 service company, directly or indirectly, without the approval of the  
11 commission shall be void and of no effect.

12 After July 1, 1999, this section does not apply to the generating  
13 assets of any electrical company.

14 **Sec. 25.** RCW 80.24.010 and 1994 c 83 s 1 are each amended to read  
15 as follows:

16 Every public service company subject to regulation by the  
17 commission shall, on or before the date specified by the commission for  
18 filing annual reports under RCW 80.04.080, file with the commission a  
19 statement on oath showing its gross operating revenue from intrastate  
20 operations for the preceding calendar year or portion thereof and pay  
21 to the commission a fee equal to one-tenth of one percent of the first  
22 fifty thousand dollars of gross operating revenue, plus two-tenths of  
23 one percent of any gross operating revenue in excess of fifty thousand  
24 dollars: PROVIDED, That the fee shall in no case be less than one  
25 dollar.

26 The percentage rates of gross operating revenue to be paid in any  
27 year may be decreased by the commission for any class of companies  
28 subject to the payment of such fees, by general order entered before  
29 March 1st of such year, and for such purpose such companies shall be  
30 classified as follows:

31 Electrical, gas, water, telecommunications, and irrigation  
32 companies shall constitute class one. Every other company subject to  
33 regulation by the commission, for which regulatory fees are not  
34 otherwise fixed by law shall pay fees as herein provided and shall  
35 constitute additional classes according to kinds of businesses engaged  
36 in.

37 Any payment of the fee imposed by this section made after its due  
38 date shall include a late fee of two percent of the amount due.

1 Delinquent fees shall accrue interest at the rate of one percent per  
2 month.

3 After July 1, 1999, the regulatory fees of electrical companies  
4 shall not be based on revenue from generating assets.

5 **Sec. 26.** RCW 80.28.020 and 1961 c 14 s 80.28.020 are each amended  
6 to read as follows:

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

19 After July 1, 1999, this section does not apply to the rates and  
20 charges for electricity sold by electrical companies to retail electric  
21 customers.

22 **Sec. 27.** RCW 80.28.050 and 1961 c 14 s 80.28.050 are each amended  
23 to read as follows:

24 Every gas company, electrical company and water company shall file  
25 with the commission and shall print and keep open to public inspection  
26 schedules in such form as the commission may prescribe, showing all  
27 rates and charges made, established or enforced, or to be charged or  
28 enforced, all forms of contract or agreement, all rules and regulations  
29 relating to rates, charges or service, used or to be used, and all  
30 general privileges and facilities granted or allowed by such gas  
31 company, electrical company or water company.

32 After July 1, 1999, this section does not apply to the rates and  
33 charges for electricity sold by electrical companies to retail electric  
34 customers.

35 NEW SECTION. **Sec. 28.** A new section is added to chapter 41.06 RCW  
36 to read as follows:

1 In addition to the exemptions under RCW 41.06.070, the provisions  
2 of this chapter do not apply to staff of the independent system  
3 operator exempt under section 7(4) of this act or to staff of the  
4 Northwest power exchange exempt under section 16(7) of this act.

5 NEW SECTION. **Sec. 29.** CAPTIONS. Captions used in this act do not  
6 constitute part of the law.

7 NEW SECTION. **Sec. 30.** Sections 1 through 21 of this act  
8 constitute a new chapter in Title 80 RCW.

9 NEW SECTION. **Sec. 31.** SEVERABILITY. If any provision of this act  
10 or its application to any person or circumstance is held invalid, the  
11 remainder of the act or the application of the provision to other  
12 persons or circumstances is not affected.

--- END ---