

1 **ESSB 6560** - H AMD TO EN COMM AMD (H-5365.1/98) **1124 FAILED 3-5-98**

2 By Representative Poulsen

3 Strike everything after the enacting clause and insert the  
4 following:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

6 (a) Electricity is a basic and fundamental need of all residents;  
7 and

8 (b) Currently Washington's consumer-owned and investor-owned  
9 utilities offer consumers a high degree of reliability and service  
10 quality while providing some of the lowest rates in the country.

11 (2) The legislature intends to:

12 (a) Preserve the benefits of consumer and environmental  
13 protection, system reliability, high service quality, and low-cost  
14 rates;

15 (b) Ensure that all retail electrical customers have the same  
16 level of rights and protections; and

17 (c) Require the adequate disclosure of the rights afforded to  
18 retail electric customers.

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

21 (1) "Commission" means the utilities and transportation  
22 commission.

23 (2) "Consumer-owned distribution utility" means an electricity  
24 distribution utility that is a municipal electric utility formed under  
25 Title 35 RCW, a public utility district formed under Title 54 RCW, a  
26 cooperative formed under chapter 23.86 RCW, an irrigation district  
27 formed under chapter 87.03 RCW, or a mutual corporation or association  
28 formed under chapter 24.06 RCW.

29 (3) "Department" means the department of community, trade, and  
30 economic development.

31 (4) "Electricity" means electric energy measured in kilowatt  
32 hours, or electric capacity measured in kilowatts, or both.

1 (5) "Electricity distribution utility" means a consumer-owned or  
2 investor-owned utility that is authorized and engaged in the business  
3 of distributing electricity to retail electric customers in the state.

4 (6) Electric meters in service- means those meters that record  
5 in at least nine of twelve calendar months in any calendar year not  
6 less than two hundred fifty kilowatt hours per month.

7 (7) "Electricity supplier" means a person or entity including, but  
8 not limited to, an electric utility, aggregator, marketer, broker, or  
9 independent power producer, that sells electricity to more than one  
10 retail electric customer in the state.

11 (8) "Governing body" means the council of a city or town, the  
12 commissioners of an irrigation district, municipal electric utility, or  
13 public utility district, or the board of directors of an electric  
14 cooperative or mutual association that has the authority to set and  
15 approve rates.

16 (9) "Investor-owned distribution utility" means an electricity  
17 distribution utility owned by investors that meets the definition of an  
18 electrical company as defined in RCW 80.04.010.

19 (10) "Proprietary customer information" means (a) information that  
20 relates to the source and amount of electricity used by a customer, a  
21 customer's payment history, and household data that is made available  
22 by the customer solely by virtue of the utility-customer or supplier-  
23 customer relationship; and (b) information contained in a customer's  
24 bill.

25 (11) "Renewable resources" means electricity generation facilities  
26 fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal  
27 energy; (e) landfill gas; or (f) biomass energy based on solid organic  
28 fuels from wood, forest, or field residues, or dedicated energy crops  
29 that do not include wood pieces that have been treated with chemical  
30 preservatives such as creosote, pentachlorophenol, or copper-chrome-  
31 arsenic.

32 (12) "Resale" means the purchase and subsequent sale of  
33 electricity for profit, but does not include the purchase and the  
34 subsequent sale of electricity at the same rate at which the  
35 electricity was purchased.

36 (13) "Retail electric customer" means a person or entity that  
37 purchases electricity for ultimate consumption and not for resale.

1 (14) "Small utility" means any consumer-owned utility with twenty-  
2 five thousand or fewer electric meters in service, or that has an  
3 average of seven or fewer customers per mile of distribution line.

4 (15) "State" means the state of Washington.

5 NEW SECTION. **Sec. 3.** (1) Except as otherwise provided in  
6 subsection 2 of this section, each electricity distribution utility  
7 must provide its retail electric customers with the following  
8 disclosures in accordance with section 4 of this act:

9 (a) An explanation of any applicable credit and deposit  
10 requirements, including the means by which credit may be established,  
11 the conditions under which a deposit may be required, the amount of any  
12 deposit, interest paid on the deposit, and the circumstances under  
13 which the deposit will be returned or forfeited.

14 (b) A complete, itemized listing of all rates and charges for  
15 which the customer is responsible, including charges, if any, to  
16 terminate service, and an explanation of how to receive notice of  
17 public hearings where changes in rates will be considered or approved.

18 (c) An explanation of the metering or measurement policies and  
19 procedures, including the process for verifying the reliability of the  
20 meters or measurements and adjusting bills upon discovery of errors in  
21 the meters or measurements.

22 (d) An explanation of bill payment policies and procedures,  
23 including due dates, applicable late fees, and the interest rate  
24 charged, if any, on unpaid balances.

25 (e) An explanation of the payment arrangement options available to  
26 customers, including budget payment plans and the availability of home  
27 heating assistance from government and private sector organizations.

28 (f) An explanation of the method by which customers must give  
29 notice of their intent to discontinue service, the circumstances under  
30 which service may be discontinued by the utility, the conditions that  
31 must be met by the utility prior to discontinuing service, and how to  
32 avoid disconnection.

33 (g) An explanation of the utility's policies governing the  
34 confidentiality of proprietary customer information, including the  
35 circumstances under which the information may be disclosed and ways in  
36 which customers can control access to the information.

1 (h) An explanation of the methods by which customers may make  
2 inquiries to and file complaints with the utility, and the utility's  
3 procedures for responding to and resolving complaints and disputes,  
4 including a customer's right to complain about an investor-owned  
5 distribution utility to the commission and appeal a decision by a  
6 consumer-owned utility to the governing body of the consumer-owned  
7 utility.

8 (i) An annual report containing the following information for the  
9 previous calendar year:

10 (i) A general description of the electricity distribution  
11 utility's customers, including the number of residential, commercial,  
12 and industrial customers served by the electric distribution utility,  
13 and the amount of electricity consumed by each customer class stated as  
14 a percentage of the total utility load;

15 (ii) A summary of the average electricity rates for each customer  
16 class stated in cents per kilowatt hour, the date of the electricity  
17 distribution utility's last general rate increase or decrease, the  
18 identity of the entity responsible for setting rates, and an  
19 explanation of how to receive notice of public hearings where changes  
20 in rates will be considered or approved;

21 (iii) An explanation of the fuel mix used by the electricity  
22 distribution utility to serve its retail electric customers, shown as  
23 a pie chart where each resource comprising five percent or more of the  
24 total fuel mix is separately listed. The fuel mix associated with the  
25 portion of power bought on the market may be estimated using the  
26 western systems coordinating council average for the previous year as  
27 a default, and an explanation of this estimate must be included in the  
28 annual report; and

29 (iv) An explanation of the amount invested by the electricity  
30 distribution utility in conservation, nonhydrorenewable resources, and  
31 low-income energy assistance programs, and the source of funding for  
32 the investments.

33 (2) A small utility is not required, but is encouraged, to prepare  
34 an annual report described in subsection (1)(i) of this section.

35 NEW SECTION. **Sec. 4.** (1) An electricity distribution utility  
36 shall provide the disclosures required in section 3 of this act to  
37 retail electric customers at the following times:

- 1 (a) At the time service is established;
  - 2 (b) At least once a year after the adoption of the policies and  
3 procedures by the utility under section 5 or 6 of this act; and
  - 4 (c) At any time upon request of the customer.
- 5 (2) Required disclosures shall be provided in writing using plain  
6 language that is understandable to an ordinary customer and presented  
7 in a form that is clear and conspicuous.

8 NEW SECTION. **Sec. 5.** (1) Not later than December 1, 1998, each  
9 investor-owned distribution utility shall adopt consumer protection  
10 policies and procedures to implement the disclosure requirements of  
11 this chapter and any related commission rules, whether the rules are  
12 currently existing or adopted under this section. An investor-owned  
13 distribution utility shall file its policies and procedures with the  
14 commission and may modify the policies and procedures from time to  
15 time, subject to the approval of the commission.

16 (2) The commission may adopt rules as necessary to ensure  
17 compliance by investor-owned distribution utilities with the  
18 requirements of this act.

19 NEW SECTION. **Sec. 6.**(1) Not later than December 1, 1998, the  
20 governing body of each consumer-owned distribution utility shall adopt  
21 consumer protection policies and procedures to implement the disclosure  
22 requirements of this chapter. The policies and procedures shall be  
23 adopted only after one or more public meetings on the matter have been  
24 held. A consumer-owned distribution utility shall file its policies  
25 and procedures with the department along with a summary of the public  
26 meetings held on the policies and procedures. A consumer-owned  
27 distribution utility may modify the policies and procedures from time  
28 to time, subject to the approval of the utility's governing body after  
29 a public meeting on the matter.

30 (2) Upon request of the governing body of a consumer-owned  
31 distribution utility, the department, the attorney general, and the  
32 commission shall provide technical assistance to a consumer-owned  
33 distribution utility in the development of its policies and procedures.

1           NEW SECTION.   **Sec. 7.**   Nothing in chapter . . . , Laws of 1998  
2 (this act) shall be construed as conferring on any state agency  
3 jurisdiction, supervision, or control over any consumer-owned utility.

4           NEW SECTION.   **Sec. 8.**   (1) The utilities and transportation  
5 commission and the department of community, trade, and economic  
6 development shall jointly study the following issues:

7           (a) Variations in retail electricity rates within the state and in  
8 comparison with national averages, trends affecting the electric  
9 service costs for all customers in the state, and strategies available  
10 to minimize those costs in the future;

11           (b) Demographics of retail electric customers in the state to  
12 include the distribution of customers by size of load;

13           (c) The potential for cost-shifting among customer classes and  
14 among customers within the same class, and strategies available to  
15 minimize inappropriate cost shifts;

16           (d) The consumer protection policies and procedures of electric  
17 utilities, including areas of consistency and inconsistency among the  
18 utilities in those policies and procedures;

19           (e) The status, number, and primary characteristics of service  
20 territory agreements between electric utilities;

21           (f) The current level of service quality and reliability as  
22 measured by available statistics, trends affecting quality of service  
23 and the integrity and reliability of the distribution system, and ways  
24 to ensure high service quality and reliability in the future; and

25           (g) Current levels of investment in conservation,  
26 nonhydrorenewable resources, and low-income energy assistance programs,  
27 trends affecting such investment, and ways to fairly, efficiently, and  
28 effectively foster future achievement of the purposes of such  
29 investment.

30           (2) The utilities and transportation commission and the department  
31 of community, trade, and economic development shall consult with the  
32 chair and ranking minority member of the senate and house of  
33 representatives energy and utilities committees, electric utilities,  
34 retail electric customers, and other interested parties throughout the  
35 course of the study and shall report the results of this study to the  
36 legislature and the governor no later than December 31, 1998.

1 (3) Each electricity distribution utility shall cooperate with the  
2 commission and the department in the preparation of the study and  
3 report required by this section, and shall provide all information  
4 requested by the commission or the department in a timely manner so  
5 that the study and report will be as thorough as possible and completed  
6 on schedule. The commission and department shall coordinate and  
7 cooperate with each other in preparing the study and report,  
8 particularly in requesting information from, or the assistance of,  
9 electric distribution utilities, to minimize the potential for  
10 redundant requests.

11 NEW SECTION. **Sec. 9.** Sections 11 through 17 of this act apply to  
12 electricity suppliers that are authorized to market, promote, sell, or  
13 provide electricity to retail electric customers as a product separate  
14 from the distribution services provided by the customers' electricity  
15 distribution utilities. However, nothing in this chapter shall be  
16 construed to provide electricity suppliers the authority to market,  
17 promote, sell, or provide electricity to retail electric customers as  
18 products separate from the distribution services provided by  
19 electricity distribution utilities.

20 NEW SECTION. **Sec. 10.** (1) An electricity supplier that makes an  
21 oral solicitation to sell electricity directly to a retail electric  
22 customer for distribution by the customer's electricity distribution  
23 utility shall disclose as part of the oral solicitation the following  
24 information:

25 (a) The average price for various usage patterns, based on  
26 regional load profiles;

27 (b) Notice that the price is for generation only and that  
28 additional rates and charges will apply from the customer's electricity  
29 distribution utility;

30 (c) A description of the contract length, including beginning and  
31 ending dates, and the method of renewal;

32 (d) The fuel mix used to supply the product, except that when the  
33 electricity will be supplied without regard to a particular source of  
34 generation, then that fact shall be disclosed; and

35 (e) Any other material terms or conditions of the sale.

1 (2) Prior to selling electricity to a retail electric customer for  
2 distribution by the customer's electricity distribution utility, an  
3 electricity supplier shall disclose the following information in  
4 writing to the customer:

5 (a) The electricity supplier's policies and procedures regarding  
6 the consumer protection issues for which disclosure is required under  
7 section 3 of this act;

8 (b) The terms and conditions for which disclosure is required  
9 under subsection (1) of this section;

10 (c) The fuel mix used to supply the product, shown as a pie chart  
11 where each resource comprising five percent or more of the total fuel  
12 mix is separately listed;

13 (d) An explanation of whether the rates or charges are fixed or  
14 variable and, if variable, a description of the formula by which those  
15 rates or charges may change; and

16 (e) A description of any other products or services to be provided  
17 by the electricity supplier, if any, other than electricity.

18 (3) Required disclosures under this section shall be provided  
19 using plain language that is understandable to ordinary customers and  
20 presented in a form that is clear and conspicuous.

21 NEW SECTION. **Sec. 11.** (1) Prior to engaging in the business of  
22 selling or advertising to sell electricity directly to a retail  
23 electric customer for distribution by the customer's electricity  
24 distribution utility, an electricity supplier shall establish a  
25 customer service facility or other means to receive and respond to  
26 customer complaints and inquiries regarding service. The facility  
27 shall be adequately staffed from at least 7 a.m. until 7 p.m. and be  
28 reachable by a toll-free number.

29 (2) The customer service facility or other means shall, at a  
30 minimum, receive and respond to:

31 (a) Reports of interruption of service at any time of day;

32 (b) Inquiries from customers regarding billing amounts and  
33 practices;

34 (c) Requests for information regarding the price, product  
35 information, and terms of service provided by the electricity supplier;

36 (d) Inquiries regarding conservation efforts, if any, made by the  
37 electricity supplier;



1 (e) Requests for appealing a decision of the electricity supplier.  
2 (3) There shall be no charge for use of the facility or other  
3 means by any person.

4 NEW SECTION. **Sec. 12.** (1) An agreement between an electricity  
5 supplier and a retail electric customer for the purchase and sale of  
6 electricity may only be made in writing.

7 (2) No electricity supplier shall change, or request or authorize  
8 any other entity to change, a retail electric customer's electricity  
9 product or supplier unless and until the submitting electricity  
10 supplier has obtained the customer's written or electronic  
11 authorization and provided verification of the authorization to the  
12 current electricity supplier and electricity distribution utility.

13 (3) Retail electric customers are not obligated for unauthorized  
14 charges resulting from an unwritten purchase and sale agreement or an  
15 unlawful charge, and electricity suppliers may not bill customers for  
16 the charges.

17 (4) An electricity supplier is liable to a retail electric  
18 customer for liquidated damages in the amount of one hundred dollars  
19 for each unauthorized change.

20 NEW SECTION. **Sec. 13.** It is an unfair or deceptive act or  
21 practice and a violation of this section for any electricity supplier  
22 to place a commercial telephone solicitation to any residence that will  
23 be received before 8:00 a.m. or after 5:00 p.m. at the retail electric  
24 customer's local time, notwithstanding the provisions of RCW  
25 19.158.040(2).

26 NEW SECTION. **Sec. 14.** (1) Any person making an express or  
27 implied claim concerning an electricity product must, at the time the  
28 claim is made, possess and rely upon a reasonable basis substantiating  
29 the claim.

30 (2) An electricity supplier making an expressed or implied claim  
31 relating to any aspect of an electricity product included in the  
32 disclosures required under section 10 of this act may substantiate the  
33 claims with the information required to be disclosed under those  
34 sections.

1           (3) Electricity suppliers may make express or implied marketing  
2 claims relating to their projected performance if, at the time the  
3 claim is made, they possess and rely upon a reasonable basis for  
4 substantiating the claim. If the actual performance differs from the  
5 projected performance in a material way during any six-month period  
6 that an agreement is in effect, the electricity service provider shall  
7 provide the retail electric customer, in a timely manner, with a brief,  
8 written explanation for the difference and a notice that as a result of  
9 the difference, the customer has the right to change suppliers without  
10 incurring any transfer charge.

11           NEW SECTION. **Sec. 15.** (1) All electricity distribution utilities  
12 and electricity suppliers shall protect the confidentiality of  
13 proprietary information of, and relating to, retail electric customers.  
14 An electricity distribution utility or electricity supplier that  
15 receives or obtains proprietary customer information from another  
16 electricity distribution utility or electricity supplier for the  
17 purposes of providing retail electric service shall use the information  
18 only for such a purpose, and shall not use the information for its own  
19 marketing efforts.

20           (2) Except as required by law or with the approval of the  
21 customer, an electricity distribution utility or electricity supplier  
22 that receives or obtains proprietary customer information by virtue of  
23 its provision of electricity or related services shall only use,  
24 disclose, or permit access to individually identifiable proprietary  
25 customer information in its provision of electricity from which the  
26 information is derived or services necessary to, or used in, the  
27 provision of electricity service. Nothing in this subsection shall be  
28 construed to prohibit an electricity distribution utility or  
29 electricity supplier from using, disclosing, or permitting access to  
30 proprietary customer information obtained from its customers to  
31 initiate, render, bill, or collect for electricity and related  
32 services.

33           (3) An electricity distribution utility or electricity supplier  
34 shall disclose proprietary customer information, upon affirmative  
35 written request by the customer, to any person designated by the  
36 customer.

1 (4) An electricity distribution utility or electricity supplier  
2 that receives or obtains proprietary customer information by virtue of  
3 its provision of electricity or related services may use, disclose, or  
4 permit access to aggregate customer information other than for the  
5 purposes described in subsection (2) of this section. An electricity  
6 distribution utility may use, disclose, or permit access to aggregate  
7 customer information other than for the purposes described in  
8 subsection (2) of this section only if it provides the information to  
9 other electricity suppliers on reasonable and nondiscriminatory terms  
10 and conditions upon reasonable request of the suppliers. For the  
11 purposes of this subsection, "aggregate information" means collective  
12 data that relates to a group or category of services or customers, from  
13 which individual customer identities and characteristics have been  
14 removed. Aggregate information shall not be released without  
15 permission of the affected customers when the information concerns a  
16 group of customers that is small enough to reveal the probable usage,  
17 billing, or payment behavior of any individual members of the customer  
18 group. There is a rebuttable presumption that a customer group with  
19 less than twenty-five members meets this criteria.

20 NEW SECTION. **Sec. 16.** (1) It is an unfair or deceptive act or  
21 practice and a violation of this section for any electricity supplier  
22 to engage in the following conduct:

23 (a) Failing to disclose in a clear and conspicuous manner, before  
24 a retail electric customer authorizes payment for an electricity  
25 product offered:

26 (i) The information required in section 10 of this act;

27 (ii) All material restrictions, limitations, or conditions to  
28 purchase, receive, or use the products or services that are the subject  
29 of the sales offer; and

30 (iii) In any one-time price inducements, all material  
31 restrictions, limitations, or conditions to receive or redeem the  
32 inducement that is the subject of the sales offer;

33 (b) Misrepresenting, directly or by implication, any of the  
34 following:

35 (i) The information required in section 10 of this act;

1 (ii) All material restrictions, limitations, or conditions to  
2 purchase, receive, or use the products or services that are the subject  
3 of the sales offer;

4 (iii) In any one-time price inducements, all material  
5 restrictions, limitations, or conditions to receive or redeem the  
6 inducement that is the subject of the sales offer; or

7 (iv) An electricity supplier's affiliation with, or endorsement  
8 by, any government or third-party organization; or

9 (c) Making a false or misleading statement to induce any person to  
10 pay for electricity or other related services.

11 (2) For the purposes of this section, an electricity supplier  
12 includes any person authorized by the electricity supplier to market,  
13 promote, or sell electricity or other related services.

14 NEW SECTION. **Sec. 17.** (1) The acts and practices covered by  
15 sections 11 through 17 of this act vitally affect the public interest,  
16 the electricity bills of consumers, and the competitive positions of  
17 businesses and industries for the purposes of applying chapter 19.86  
18 RCW, the consumer protection act. Unfair or deceptive methods of  
19 marketing, promoting, selling, and providing electricity and ancillary  
20 services are unreasonable in relation to the development of competitive  
21 markets for power and are injurious to the public interest.

22 (2) Every electricity supplier that markets, promotes, sells, or  
23 provides electricity directly to retail electric customers for delivery  
24 by the customer's electricity distribution utility must comply with the  
25 requirements of sections 11 through 17 of this act. Failure to comply  
26 with these sections constitutes an unfair or deceptive act or practice  
27 for the purposes of applying chapter 19.86 RCW, the consumer protection  
28 act.

29 (3) Any actions or transactions after the effective date of this  
30 act, related to the marketing, promoting, selling, or the provision of  
31 electricity directly to retail electric customers for delivery by the  
32 customer's electricity distribution utility shall not be deemed  
33 otherwise permitted, prohibited, or regulated by the commission for the  
34 purposes of establishing an exemption under RCW 19.86.170, and shall be  
35 deemed to be acting in trade or commerce for the purposes of applying  
36 chapter 19.86 RCW, the consumer protection act.

1           NEW SECTION.   **Sec. 18.** Sections 1 through 6 and 10 through 13 of  
2 this act constitute a new chapter in Title 18 RCW.

3           NEW SECTION.   **Sec. 19.** If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected."

7           Correct the title.

--- END ---