

2SSB 5034 - H COMM AMD  
By Committee on Environment

ADOPTED 04/05/2011

1 Strike everything after the enacting clause and insert the  
2 following:

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

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

13 As used in this title, unless specifically defined otherwise or  
14 unless the context indicates otherwise:

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

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

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

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

26 (5) "Competitive telecommunications company" means a  
27 telecommunications company which has been classified as such by the  
28 commission pursuant to RCW 80.36.320.

1       (6) "Competitive telecommunications service" means a service which  
2 has been classified as such by the commission pursuant to RCW  
3 80.36.330.

4       (7) "Corporation" includes a corporation, company, association or  
5 joint stock association.

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

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

12       (10) "Gas company" includes every corporation, company,  
13 association, joint stock association, partnership and person, their  
14 lessees, trustees or receiver appointed by any court whatsoever, and  
15 every city or town, owning, controlling, operating or managing any gas  
16 plant within this state.

17       (11) "Electric plant" includes all real estate, fixtures and  
18 personal property operated, owned, used or to be used for or in  
19 connection with or to facilitate the generation, transmission,  
20 distribution, sale or furnishing of electricity for light, heat, or  
21 power for hire; and any conduits, ducts or other devices, materials,  
22 apparatus or property for containing, holding or carrying conductors  
23 used or to be used for the transmission of electricity for light, heat  
24 or power.

25       (12) "Electrical company" includes any corporation, company,  
26 association, joint stock association, partnership and person, their  
27 lessees, trustees or receivers appointed by any court whatsoever (other  
28 than a railroad or street railroad company generating electricity  
29 solely for railroad or street railroad purposes or for the use of its  
30 tenants and not for sale to others), and every city or town owning,  
31 operating or managing any electric plant for hire within this state.

32 "Electrical company" does not include a company or person employing a  
33 cogeneration facility solely for the generation of electricity for its  
34 own use or the use of its tenants or for sale to an electrical company,  
35 state or local public agency, municipal corporation, or quasi municipal  
36 corporation engaged in the sale or distribution of electrical energy,  
37 but not for sale to others, unless such company or person is otherwise  
38 an electrical company.

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

3       (14) "Private telecommunications system" means a telecommunications  
4 system controlled by a person or entity for the sole and exclusive use  
5 of such person, entity, or affiliate thereof, including the provision  
6 of private shared telecommunications services by such person or entity.  
7 "Private telecommunications system" does not include a system offered  
8 for hire, sale, or resale to the general public.

9       (15) "Private shared telecommunications services" includes the  
10 provision of telecommunications and information management services and  
11 equipment within a user group located in discrete private premises in  
12 building complexes, campuses, or high-rise buildings, by a commercial  
13 shared services provider or by a user association, through privately  
14 owned customer premises equipment and associated data processing and  
15 information management services and includes the provision of  
16 connections to the facilities of a local exchange and to interexchange  
17 telecommunications companies.

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

22       (17) "Radio communications service company" includes every  
23 corporation, company, association, joint stock association,  
24 partnership, and person, their lessees, trustees, or receivers  
25 appointed by any court, and every city or town making available  
26 facilities to provide radio communications service, radio paging, or  
27 cellular communications service for hire, sale, or resale.

28       (18) "Telecommunications company" includes every corporation,  
29 company, association, joint stock association, partnership and person,  
30 their lessees, trustees or receivers appointed by any court whatsoever,  
31 and every city or town owning, operating or managing any facilities  
32 used to provide telecommunications for hire, sale, or resale to the  
33 general public within this state.

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

36       (20) "Facilities" means lines, conduits, ducts, poles, wires,  
37 cables, cross-arms, receivers, transmitters, instruments, machines,  
38 appliances, instrumentalities and all devices, real estate, easements,

1 apparatus, property and routes used, operated, owned or controlled by  
2 any telecommunications company to facilitate the provision of  
3 telecommunications service.

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

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

16 (23)(a) "Water company" includes every corporation, company,  
17 association, joint stock association, partnership and person, their  
18 lessees, trustees or receivers appointed by any court whatsoever, and  
19 every city or town owning, controlling, operating, or managing any  
20 water system for hire within this state(~~(+ PROVIDED, That)~~).

21 (b) For purposes of commission jurisdiction (~~(it shall)~~), "water  
22 company" does not include any water system serving less than one  
23 hundred customers where the average annual gross revenue per customer  
24 does not exceed three hundred dollars per year, which revenue figure  
25 may be increased annually by the commission by rule adopted pursuant to  
26 chapter 34.05 RCW to reflect the rate of inflation as determined by the  
27 implicit price deflator of the United States department of commerce(~~(+ AND PROVIDED FURTHER, That such)~~). The measurement of customers or  
28 revenues (~~(shall)~~) must include all portions of water companies having  
29 common ownership or control, regardless of location or corporate  
30 designation.  
31

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

36 (d) "Water company" also includes, for auditing purposes only,  
37 nonmunicipal water systems which are referred to the commission

1 pursuant to an administrative order from the department, or the city or  
2 county as provided in RCW 80.04.110. (~~However,~~)

3 (e) Water companies exempt from commission regulation (~~shall be~~)  
4 are subject to the provisions of chapter 19.86 RCW. A water company  
5 cannot be removed from regulation except with the approval of the  
6 commission. Water companies subject to regulation may petition the  
7 commission for removal from regulation if the number of customers falls  
8 below one hundred or the average annual revenue per customer falls  
9 below three hundred dollars. The commission is authorized to maintain  
10 continued regulation if it finds that the public interest so requires.

11 (24) "Cogeneration facility" means any machinery, equipment,  
12 structure, process, or property, or any part thereof, installed or  
13 acquired for the primary purpose of the sequential generation of  
14 electrical or mechanical power and useful heat from the same primary  
15 energy source or fuel.

16 (25) "Public service company" includes every gas company,  
17 electrical company, telecommunications company, wastewater company, and  
18 water company. Ownership or operation of a cogeneration facility does  
19 not, by itself, make a company or person a public service company.

20 (26) "Local exchange company" means a telecommunications company  
21 providing local exchange telecommunications service.

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

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

25 (29)(a) "Wastewater company" means a corporation, company,  
26 association, joint stock association, partnership and person, their  
27 lessees, trustees, or receivers that owns or proposes to develop and  
28 own a system of sewerage that is designed for a peak flow of twenty-  
29 seven thousand to one hundred thousand gallons per day if treatment is  
30 by a large on-site sewerage system, or to serve one hundred or more  
31 customers.

32 (b) For purposes of commission jurisdiction, wastewater company  
33 does not include: (i) Municipal, county, or other publicly owned  
34 systems of sewerage; or (ii) wastewater company service to customers  
35 outside of an urban growth area as defined in RCW 36.70A.030.

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

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

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

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

9           (a) A comprehensive business plan detailing the design,  
10 construction, operation, and maintenance of the proposed service  
11 system;

12           (b) Demonstration of sufficient financial resources to properly  
13 operate and maintain the proposed system, and to replace and upgrade  
14 capital assets;

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

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

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

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

24           (3) The commission may, after providing notice and an opportunity  
25 for public comment, issue certificates, or for good cause shown refuse  
26 to issue them, or issue them for the partial exercise only of the  
27 privilege sought, and may attach to the exercise of the rights granted  
28 such terms and conditions as, in its judgment, the public convenience  
29 and necessity may require.

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

32           (5)(a) Prior to the commission approving a wastewater company to  
33 provide new service or extend existing service, the wastewater company  
34 must file and continuously maintain in effect, a bond, or equivalent  
35 surety as determined by the commission, with the commission to ensure  
36 that there are sufficient funds to:

37           (i) Design, construct, operate, and maintain the proposed system;

1 (ii) Replace and upgrade capital assets as required by federal or  
2 state law or by order of the department of health or department of  
3 ecology; and

4 (iii) Allow additional connections to the system, if approved by  
5 the department of health or the department of ecology.

6 (b) The bond, or its equivalent surety, is payable under this  
7 section to the commission upon:

8 (i) An order under section 5 of this act to transfer a system or  
9 systems of sewerage to a capable wastewater company;

10 (ii) Notice that the wastewater company does not intend to renew  
11 the bond or its equivalent surety or has failed to renew the bond or  
12 its equivalent surety; or

13 (iii) A petition by the commission under section 6, 13, or 14 of  
14 this act to place a wastewater company in receivership.

15 (c) The commission must hold the payment in trust until an  
16 acquiring wastewater company is designated under section 5 of this act  
17 or a receiving entity is designated under section 6, 13, or 14 of this  
18 act, at which point the funds will be made available to the company or  
19 entity to expend as directed by the commission.

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

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

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

28 (1) Every wastewater company subject to regulation by the  
29 commission must, on or before the date specified by the commission for  
30 filing annual reports under RCW 80.04.080, pay to the commission a  
31 regulatory fee.

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

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

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

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

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

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

11 (1) If the commission determines, after providing notice and  
12 opportunity for a hearing in the manner required for complaints under  
13 RCW 80.04.110, that a wastewater company is unfit to provide wastewater  
14 service on any system of sewerage, under its ownership, the commission  
15 may order the transfer of any such system or systems to a capable  
16 wastewater company.

17 (2) In determining whether a wastewater company is unfit to provide  
18 wastewater service on a system of sewerage in consultation with the  
19 department of health or the department of ecology as appropriate to the  
20 agencies' jurisdiction, the commission may consider the company's  
21 technical and managerial expertise to operate the system of sewerage,  
22 the company's financial soundness and the company's willingness and  
23 ability to make ongoing investments necessary to maintain compliance  
24 with statutory and regulatory standards for the safety, adequacy,  
25 efficiency, and reasonableness of the service provided.

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

29 (a) Alternatives to the transfer are impractical or not  
30 economically feasible;

31 (b) The acquiring wastewater company is willing and able to acquire  
32 the system or systems of sewerage, financially sound, and has the  
33 technical and managerial expertise to own and operate the system or  
34 systems of sewerage in compliance with applicable statutory and  
35 regulatory standards; and

36 (c) Rates paid by existing customers served by the acquiring  
37 wastewater company will not increase unreasonably because of the



1 acquisition of the system of sewerage or because of expenditures that  
2 may be necessary to assure compliance with applicable statutory and  
3 regulatory standards for the safety, adequacy, efficiency, and  
4 reasonableness of the service provided.

5 (4) The sale price for the unfit wastewater company's system or  
6 systems of sewerage assets must be determined by agreement between the  
7 unfit wastewater company and the acquiring capable wastewater company  
8 subject to a finding by the commission that the agreed price is  
9 reasonable. A price is deemed reasonable if it does not exceed the  
10 original cost of plant in service, minus accumulated depreciation,  
11 minus contributions in aid to construction. If the unfit wastewater  
12 company and the acquiring capable wastewater company are unable to  
13 agree on the sale price or the commission finds that the agreed sale  
14 price is not reasonable, the acquiring capable wastewater company may  
15 initiate a condemnation proceeding in superior court in the manner  
16 provided by chapter 8.04 RCW to determine the compensation to be paid  
17 by the acquiring capable wastewater company for the failed system or  
18 systems of sewerage assets.

19 (5) The capable wastewater company acquiring an unfit wastewater  
20 company's system or systems shall have the same immunity from liability  
21 as wastewater companies assuming substandard systems as set forth in  
22 RCW 80.28.275.

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

27 (7) Any capable wastewater company approved by the commission to  
28 acquire the system or systems of sewerage of an unfit wastewater  
29 company must submit to the commission, for approval, a financial plan,  
30 including a timetable, for bringing the acquired system of sewerage  
31 assets into compliance with applicable statutory and regulatory  
32 standards. The acquiring capable wastewater company must also provide  
33 a copy of the plan to the department of health or the department of  
34 ecology, as appropriate to the agencies' jurisdiction, and other state  
35 or local agency as the commission may direct. The commission must give  
36 the department of health or the department of ecology, as appropriate  
37 to the agencies' jurisdiction, adequate opportunity to comment on the

1 plan and must consider any comments submitted in deciding whether or  
2 not to approve the plan.

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

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

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

29 (2) In any petition for receivership under subsection (1) of this  
30 section, the commission must recommend that the court grant the  
31 receiver full authority to act in the best interests of the customers  
32 served by the system of sewerage. The receiver must assess the  
33 capability, in conjunction with the department of health or ecology,  
34 whichever has jurisdiction, and local government, for the system to  
35 operate in compliance with health and safety standards. The receiver  
36 must report to the court and the commission its recommendations for the

1 company's future operation of the system, including the formation of a  
2 water-sewer district or other public entity, or ownership by another  
3 existing wastewater company capable of providing service.

4 (3) If a petition for receivership and verifying affidavit executed  
5 by an appropriate official allege an immediate and serious danger to  
6 residents constituting an emergency, the court must set the matter for  
7 hearing within three days and may appoint a temporary receiver ex parte  
8 upon the strength of such petition and affidavit pending a full  
9 evidentiary hearing, which must be held within fourteen days after  
10 receipt of the petition.

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

18 (5) The court must authorize the receiver to impose reasonable  
19 assessments on the customers of the system of sewerage to recover  
20 expenditures for improvements necessary for the public health and  
21 safety.

22 (6) The commission must develop a plan for transfer of the system  
23 of sewerage to a new operator and submit its plan to the court. The  
24 commission must develop the plan after notice to, and an opportunity to  
25 participate by, the receiver, the municipal corporations whose  
26 geographic boundaries, in whole or in part, include the system of  
27 sewerage at issue, and the public. The commission must complete the  
28 plan no later than twelve months after appointment of a receiver.

29 (a) If the commission finds that no private entity is able or  
30 willing to take over the system of sewerage and decides the system of  
31 sewerage should be taken over by a municipal corporation whose  
32 geographic boundaries include the system of sewerage at issue, in whole  
33 or in part, the commission must provide its findings to the court and  
34 the court may issue an order to that effect. If the court orders a  
35 municipal corporation to take over the system of sewerage, the  
36 municipal corporation must promptly institute negotiations to purchase  
37 the system. If, within six months of the court's order, the  
38 negotiations fail or otherwise do not result in a purchase, the

1 municipal corporation must promptly initiate a condemnation proceeding  
2 to acquire the system. The court must terminate the receivership once  
3 the purchase is complete.

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

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

24 (8) If, as part of the ultimate disposition of the system, a  
25 condemnation proceeding is commenced to acquire the system of sewerage,  
26 the court shall oversee any appraisal of the system conducted under  
27 Title 7 RCW to assure that the appraised value properly reflects any  
28 reduced value because of the necessity to make improvements to the  
29 system. The court has the authority to approve the appraisal and to  
30 modify the appraisal based on any information provided at an  
31 evidentiary hearing. The court's determination of the proper value of  
32 the system, based on the appraisal, is final and only appealable if not  
33 supported by substantial evidence. If the appraised value is appealed,  
34 the court may order the system's ownership to be transferred upon  
35 payment of the approved appraised value.

36 (9) The legislature grants any municipal corporation, and any  
37 private entity the power of eminent domain under the circumstances  
38 described in this section. However, a private entity must obtain

1 authorization from the city, town, or county with jurisdiction over the  
2 subject property after the legislative authority of the city, town, or  
3 county has passed an ordinance requiring that property be taken for  
4 public use. This subsection does not limit eminent domain authority  
5 granted by any other provision of law.

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

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

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

28 (c) When two or more public service corporations, (meaning to  
29 exclude municipal and other public corporations) are engaged in  
30 competition in any locality or localities in the state, either may make  
31 complaint against the other or others that the rates, charges, rules,  
32 regulations or practices of such other or others with or in respect to  
33 which the complainant is in competition, are unreasonable,  
34 unremunerative, discriminatory, illegal, unfair or intending or tending  
35 to oppress the complainant, to stifle competition, or to create or  
36 encourage the creation of monopoly, and upon such complaint or upon  
37 complaint of the commission upon its own motion, the commission (~~shall~~

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

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

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

35 (4)(a) The commission (~~shall~~) may, as appropriate, audit a  
36 nonmunicipal water system upon receipt of an administrative order from  
37 the department, or the city or county in which the water system is  
38 located, finding that the water delivered by a system does not meet

1 state board of health standards adopted under RCW 43.20.050(2)(a) or  
2 standards adopted under chapters 70.116 and 70.119A RCW, and the  
3 results of the audit (~~shall~~) must be provided to the requesting  
4 department, city, or county. However, the number of nonmunicipal water  
5 systems referred to the commission in any one calendar year shall not  
6 exceed twenty percent of the water companies subject to commission  
7 regulation as defined in RCW 80.04.010.

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

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

1 customer on a pro rata basis for the substandard water delivered to the  
2 customer, and shall order reimbursement to the customer for the cost  
3 incurred by the customer, if any, in obtaining a water quality test.

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

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

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

33 (1) The commission (~~shall have~~) has power upon complaint or upon  
34 its own motion to ascertain and determine the fair value for rate  
35 making purposes of the property of any public service company used and  
36 useful for service in this state and shall exercise such power whenever



1 it (~~shall~~) deems such valuation or determination necessary or proper  
2 under any of the provisions of this title. In determining what  
3 property is used and useful for providing electric, gas, wastewater  
4 company services, or water service, the commission may include the  
5 reasonable costs of construction work in progress to the extent that  
6 the commission finds that inclusion is in the public interest.

7 (2) The commission (~~shall—have~~) has the power to make  
8 revaluations of the property of any public service company from time to  
9 time.

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

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

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

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

34 (1) All charges made, demanded or received by any gas company,  
35 electrical company, wastewater company, or water company for gas,  
36 electricity or water, or for any service rendered or to be rendered in

1 connection therewith, shall be just, fair, reasonable and sufficient.  
2 Reasonable charges necessary to cover the cost of administering the  
3 collection of voluntary donations for the purposes of supporting the  
4 development and implementation of evergreen community management plans  
5 and ordinances under RCW 80.28.300 (~~shall~~) must be deemed as prudent  
6 and necessary for the operation of a utility.

7 (2) Every gas company, electrical company, wastewater company, and  
8 water company shall furnish and supply such service, instrumentalities  
9 and facilities as shall be safe, adequate and efficient, and in all  
10 respects just and reasonable.

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

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

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

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

34 (c) Has applied for home heating assistance from applicable  
35 government and private sector organizations and certifies that any  
36 assistance received will be applied to the current bill and future  
37 utility bills;

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

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

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

21 (5) The utility shall:

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

25 (b) Assist the customer in fulfilling the requirements under this  
26 section;

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

30 (d) Be permitted to disconnect service if the customer fails to  
31 honor the payment program. Utilities may continue to disconnect  
32 service for those practices authorized by law other than for nonpayment  
33 as provided for in this subsection. Customers who qualify for payment  
34 plans under this section who default on their payment plans and are  
35 disconnected can be reconnected and maintain the protections afforded  
36 under this chapter by paying reconnection charges, if any, and by  
37 paying all amounts that would have been due and owing under the terms

1 of the applicable payment plan, absent default, on the date on which  
2 service is reconnected; and

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

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

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

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

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

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

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

31 Whenever the commission shall find, after a hearing had upon its  
32 own motion, or upon complaint, that the rates or charges demanded,  
33 exacted, charged or collected by any gas company, electrical company,  
34 wastewater company, or water company, for gas, electricity, wastewater  
35 company services, or water, or in connection therewith, or that the  
36 rules, regulations, practices or contracts affecting such rates or  
37 charges are unjust, unreasonable, unjustly discriminatory or unduly

1 preferential, or in any wise in violation of the provisions of the law,  
2 or that such rates or charges are insufficient to yield a reasonable  
3 compensation for the service rendered, the commission shall determine  
4 the just, reasonable, or sufficient rates, charges, regulations,  
5 practices or contracts to be thereafter observed and in force, and  
6 shall fix the same by order.

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

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

32 (2) In ordering improvements in the storage, distribution, or  
33 supply of water, the commission shall consult and coordinate with the  
34 department of health. In the event that a water company fails to  
35 comply with an order of the commission (~~in a timely fashion~~) within  
36 the deadline specified in the order, the commission may request that

1 the department petition the superior court of Thurston county to place  
2 the company in receivership pursuant to chapter 7.60 RCW.

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

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

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

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

30 (3) In ordering improvements to the service of any system of  
31 sewerage, the commission shall consult and coordinate with the  
32 department of health or the department of ecology, as appropriate to  
33 the agencies' jurisdiction. In the event that a wastewater company  
34 fails to comply with an order of the commission within the deadline  
35 specified in the order, the commission may petition the superior court  
36 of Thurston county to place the company in receivership pursuant to  
37 chapter 7.60 RCW.

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

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

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

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

1 copy filed with the commission to such increase by some character  
2 immediately preceding or following the item in such schedule, such  
3 character to be in form as designated by the commission.

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

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

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

26 For the purposes of this subsection (1):

27 (i) "Employees" ((as used in this paragraph shall)) includes  
28 furloughed, pensioned and superannuated employees, persons who have  
29 become disabled or infirm in the service of any such company; and ((the  
30 term))

31 (ii) "Families((,))" ((as used in this paragraph, shall)) includes  
32 the families of those persons named in this proviso, the families of  
33 persons killed or dying in the service, also the families of persons  
34 killed, and the surviving spouse prior to remarriage, and the minor  
35 children during minority of persons who died while in the service of  
36 any of the companies named in this ((paragraph:—PROVIDED FURTHER,  
37 That)) subsection (1).



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

4       **(c)** Gas companies, electrical companies, wastewater companies, and  
5 water companies may charge the defendant for treble damages awarded in  
6 lawsuits successfully litigated under RCW 80.28.240.

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

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

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

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

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

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

35       Every gas company, electrical company, wastewater company, or water

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

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

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

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

36 Whenever the commission (~~shall~~) finds, after hearing had upon its

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

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

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

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

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

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

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

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

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

33 (e) Use or receive the direct benefit of all or a portion of the  
34 utility service with knowledge of, or reason to believe that, the  
35 diversion, tampering, or unauthorized connection existed at the time of

1 the use or that the use or receipt was without the authorization or  
2 consent of the utility.

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

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

14 (4) As used in this section:

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

17 (b) "Divert" means to change the intended course or path of  
18 electricity, gas, or water without the authorization or consent of the  
19 utility;

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

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

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

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

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

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

36 The commission's jurisdiction over the rates, charges, practices,  
37 acts or services of any water company (~~shall~~) or wastewater company

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

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

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

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

30 (1) A receiver may be appointed by the superior court of this state  
31 in the following instances, but except in any case in which a  
32 receiver's appointment is expressly required by statute, or any case in  
33 which a receiver's appointment is sought by a state agent whose  
34 authority to seek the appointment of a receiver is expressly conferred  
35 by statute, or any case in which a receiver's appointment with respect  
36 to real property is sought under (b)(ii) of this subsection, a receiver

1 shall be appointed only if the court additionally determines that the  
2 appointment of a receiver is reasonably necessary and that other  
3 available remedies either are not available or are inadequate:

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

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

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

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

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

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

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

33 (f) If and to the extent that property is subject to execution to  
34 satisfy a judgment, to preserve the property during the pendency of an  
35 appeal, or when an execution has been returned unsatisfied, or when an  
36 order requiring a judgment debtor to appear for proceedings  
37 supplemental to judgment has been issued and the judgment debtor fails  
38 to submit to examination as ordered;

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

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

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

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

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

21 (l) As provided under RCW 11.64.022;

22 (m) In an action by the department of licensing under RCW  
23 18.35.220(3) with respect to persons engaged in the business of  
24 dispensing of hearing aids, RCW 18.85.430 in the case of persons  
25 engaged in the business of a real estate broker, associate real estate  
26 broker, or real estate salesperson, or RCW 19.105.470 with respect to  
27 persons engaged in the business of camping resorts;

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

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

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

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

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

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

9 (t) In an action for or relating to dissolution of a business  
10 corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or  
11 23B.14.320, for dissolution of a nonprofit corporation under RCW  
12 24.03.271, for dissolution of a mutual corporation under RCW 24.06.305,  
13 or in any other action for the dissolution or winding up of any other  
14 entity provided for by Title 23, 23B, 24, or 25 RCW;

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

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

23 (w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030,  
24 in the case of a bank or trust company or, under and subject to RCW  
25 32.24.070 through 32.24.090, in the case of a mutual savings bank;

26 (x) Under and subject to RCW 31.12.637 and 31.12.671 through  
27 31.12.724, in the case of credit unions;

28 (y) Upon the application of the director of financial institutions  
29 under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable  
30 to agricultural lenders, under RCW 31.40.120 in actions to enforce  
31 chapter 31.40 RCW applicable to entities engaged in federally  
32 guaranteed small business loans, under RCW 31.45.160 in actions to  
33 enforce chapter 31.45 RCW applicable to persons licensed as check  
34 cashers or check sellers, or under RCW 19.230.230 in actions to enforce  
35 chapter 19.230 RCW applicable to persons licensed under the uniform  
36 money services act;

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



- 1 (aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce  
2 rights under any revenue bonds issued for the purpose of financing  
3 industrial development facilities or bonds of the Washington state  
4 housing finance commission, or any financing document securing any such  
5 bonds;
- 6 (bb) Under and subject to RCW 43.70.195, in an action by the  
7 secretary of health or by a local health officer with respect to a  
8 public water system;
- 9 (cc) As contemplated by RCW 61.24.030, with respect to real  
10 property that is the subject of nonjudicial foreclosure proceedings  
11 under chapter 61.24 RCW;
- 12 (dd) As contemplated by RCW 61.30.030(3), with respect to real  
13 property that is the subject of judicial or nonjudicial forfeiture  
14 proceedings under chapter 61.30 RCW;
- 15 (ee) Under RCW 64.32.200(2), in an action to foreclose upon a lien  
16 for common expenses against a dwelling unit subject to the horizontal  
17 property regimes act, chapter 64.32 RCW;
- 18 (ff) Under RCW 64.34.364(10), in an action by a unit owners'  
19 association to foreclose a lien for nonpayment of delinquent  
20 assessments against condominium units;
- 21 (gg) Upon application of the attorney general under RCW  
22 64.36.220(3), in aid of any writ or order restraining or enjoining  
23 violations of chapter 64.36 RCW applicable to timeshares;
- 24 (hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment  
25 or performance of municipal bonds issued with respect to facilities  
26 used to abate, control, or prevent pollution;
- 27 (ii) Upon the application of the department of social and health  
28 services under RCW 74.42.580, in cases involving nursing homes;
- 29 (jj) Upon the application of the utilities and transportation  
30 commission under RCW 80.28.040, with respect to a water company or  
31 wastewater company that has failed to comply with an order of such  
32 commission within the time deadline specified therein;
- 33 (kk) Under RCW 87.56.065, in connection with the dissolution of an  
34 irrigation district;
- 35 (ll) Upon application of the attorney general or the department of  
36 licensing, in any proceeding that either of them are authorized by  
37 statute to bring to enforce Title 18 or 19 RCW; the securities act of

1 Washington, chapter 21.20 RCW; the Washington commodities act, chapter  
2 21.30 RCW; the land development act, chapter 58.19 RCW; or under  
3 chapter 64.36 RCW relating to the regulation of timeshares;

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

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

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

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

35 (4) The order appointing a receiver in all cases (~~shall~~) must  
36 reasonably describe the property over which the receiver is to take  
37 charge, by category, individual items, or both if the receiver is to  
38 take charge of less than all of the owner's property. If the order

1 appointing a receiver does not expressly limit the receiver's authority  
2 to designated property or categories of property of the owner, the  
3 receiver is a general receiver with the authority to take charge over  
4 all of the owner's property, wherever located.

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

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

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

26 NEW SECTION. **Sec. 29.** (1) The commission may adopt rules to  
27 implement this act before July 1, 2012, to ensure that this act is  
28 implemented on its effective date.

29 (2)(a) The commission may collect payments from wastewater  
30 companies and other private entities that have notified the commission  
31 of their willingness to cover the costs of the rule making. The  
32 commission must issue a notice of intent to adopt rules that includes  
33 a request that wastewater companies or other private entities notify  
34 the commission of their intent to participate in the cost recovery  
35 mechanism.

1 (b) Upon receipt of the statements of intent to participate in the  
2 cost recovery mechanism, the commission must proportionately divide  
3 among the companies or private entities the anticipated cost of the  
4 rule making and send the parties an invoice.

5 (c) Upon receipt of sufficient funds to pay for the rule making,  
6 the commission must commence the rule-making process.

7 (3) The commission is not required to engage in rule making until  
8 it has collected sufficient payments to cover the projected costs of  
9 the rule making.

10 (4) The commission must provide a refund for any overpayment of the  
11 costs at the conclusion of the rule making.

12 (5) Between the conclusion of the rule making and June 30, 2013,  
13 the commission may collect from applicants for a certificate of public  
14 convenience and necessity a portion of the costs of rule making and  
15 provide proportionate refunds to the parties that had previously paid  
16 for the costs of rule making.

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

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

25 NEW SECTION. **Sec. 32.** Except for section 29 of this act, this act  
26 takes effect July 1, 2012."

27 Correct the title.

EFFECT: (1) Clarifies in what circumstances the bond or  
equivalent surety is payable to the Utilities and Transportation  
Commission (UTC);

(2) Restructures the provisions concerning the appointment of a  
court-order receiver to clarify the role of the UTC and the court;

(3) Requires the petition for a court-appointed receiver to be filed in Thurston County;

(4) Removes the provision making the bill effective only if the UTC receives legislative approval of the regulatory fees proposed by the UTC (and removes the reporting notice associated with this contingency);

(5) Modifies the rule-making authority of the UTC granted by the bill; and

(6) Makes technical changes to improve grammatical structure and organization and provide consistency between terms and sections.

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