
ENGROSSED SENATE BILL 6411

State of Washington 53rd Legislature 1994 Regular Session

By Senators Sutherland and Ludwig; by request of Utilities & Transportation Commission

Read first time 01/21/94. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to the regulation by the utilities and
2 transportation commission of securities issued by regulated utilities
3 and transportation companies; amending RCW 80.08.040, 81.80.010,
4 80.08.100, 80.08.110, 80.08.120, 80.08.130, 81.08.040, 81.08.100,
5 81.08.110, 81.08.120, and 81.08.130; adding a new section to chapter
6 80.08 RCW; adding a new section to chapter 81.08 RCW; repealing RCW
7 80.08.045, 80.08.050, 80.08.060, 80.08.105, 81.08.010, 81.08.050,
8 81.08.060, and 81.08.105; and prescribing penalties.

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

10 **Sec. 1.** RCW 80.08.040 and 1987 c 106 s 1 are each amended to read
11 as follows:

12 (~~Except as provided in RCW 80.08.045, application for~~
13 ~~authorization to issue such stocks and stock certificates or other~~
14 ~~evidence of interest or ownership, and bonds, notes or other evidences~~
15 ~~of indebtedness shall be made to the commission stating the amount,~~
16 ~~character, terms and purpose of each proposed issue thereof, and~~
17 ~~stating such other pertinent details as the commission may require.~~

18 ~~To enable it to determine whether it will issue such order, the~~
19 ~~commission may hold a hearing and may make such additional inquiry or~~

1 investigation, and examine such witnesses, books, papers, documents and
2 contracts, and require the filing of such data as it may deem of
3 assistance. The commission may by its order grant permission for the
4 issuance of such stocks or stock certificates or other evidence of
5 interest or ownership, or bonds, notes or other evidences of
6 indebtedness in the amount applied for, or in a lesser amount, or not
7 at all, and may attach to the exercise of its permission such condition
8 or conditions as it may deem reasonable and necessary.

9 If a commission or other agency or agencies is empowered by another
10 state to regulate and control the amount and character of securities to
11 be issued by any public service company within such other state, then
12 the commission shall have the power to agree with such commission or
13 other agency or agencies of such other state on the issuance of stocks
14 and stock certificates or other evidence of interest or ownership, and
15 bonds, notes or other evidences of indebtedness by a public service
16 company owning or operating a public utility both in such state and in
17 this state, and shall have the power to approve such issue jointly with
18 such commission or other agency or agencies and to issue a joint
19 certificate of such approval: PROVIDED, HOWEVER, That no such joint
20 approval shall be required in order to express the consent to and
21 approval of such issue by the state of Washington if said issue is
22 separately approved by the commission.

23 The public service company making the application may have the
24 decision or order of the commission reviewed in the courts in the same
25 manner and by the same procedure as any other order or decision of the
26 commission, when the public service company shall deem such decision or
27 order to be in any respect or manner improper, unjust or
28 unreasonable.)) (1) Any public service company that undertakes to
29 issue stocks, stock certificates, other evidence of interest or
30 ownership, bonds, notes, or other evidences of indebtedness, or to
31 create liens on its property situated within this state shall file with
32 the commission before such issuance or creation:

33 (a) A description of the purposes for which the issuance or
34 creation is made, including a certification by an officer authorized to
35 do so that the proceeds from any such financing is for one or more of
36 the purposes allowed by this chapter;

37 (b) A description of the proposed issuance or creation including
38 the terms of financing; and

1 (c) A statement as to why the transaction is in the public
2 interest.

3 (2) Any armored car service, as defined in RCW 81.80.010, that
4 files the documents required in this section is exempt from any
5 requirement to obtain any further authority under this title or Title
6 81 RCW solely for purposes of acting in the capacity of an armored car
7 service.

8 **Sec. 2.** RCW 81.80.010 and 1989 c 60 s 1 are each amended to read as
9 follows:

10 The definitions set forth in this section apply throughout this
11 chapter.

12 (1) "Person" means and includes an individual, firm, copartnership,
13 corporation, company, or association or their lessees, trustees, or
14 receivers.

15 (2) "Motor vehicle" means any truck, trailer, semitrailer, tractor,
16 dump truck which uses a hydraulic or mechanical device to dump or
17 discharge its load, or any self-propelled or motor-driven vehicle used
18 upon any public highway of this state for the purpose of transporting
19 property, but not including baggage, mail, and express transported on
20 the vehicles of auto transportation companies carrying passengers.

21 (3) "Public highway" means every street, road, or highway in this
22 state.

23 (4) "Common carrier" means any person who undertakes to transport
24 property for the general public by motor vehicle for compensation,
25 whether over regular or irregular routes, or regular or irregular
26 schedules, including motor vehicle operations of other carriers by rail
27 or water and of express or forwarding companies, and excluding armored
28 car services.

29 (5) "Contract carrier" includes all motor vehicle operators not
30 included under the terms "common carrier" and "private carrier" as
31 herein defined in paragraph (4) and paragraph (6), and further includes
32 any person who under special and individual contracts or agreements
33 transports property by motor vehicle for compensation, but excludes
34 armored car services.

35 (6) A "private carrier" is a person who transports by his own motor
36 vehicle, with or without compensation therefor, property which is owned
37 or is being bought or sold by such person, or property of which such
38 person is the seller, purchaser, lessee, or bailee where such

1 transportation is incidental to and in furtherance of some other
2 primary business conducted by such person in good faith.

3 (7) "Motor carrier" means and includes "common carrier," "contract
4 carrier," "private carrier," and "exempt carrier" as herein defined.

5 (8) "Exempt carrier" means any person operating a vehicle exempted
6 from certain provisions of this chapter under RCW 81.80.040.

7 (9) "Vehicle" means every device capable of being moved upon a
8 public highway and in, upon, or by which any person or property is or
9 may be transported or drawn upon a public highway, excepting devices
10 moved by human or animal power or used exclusively upon stationary rail
11 or tracks.

12 (10) "Commercial zone" means an area encompassing one or more
13 cities or towns and environs adjacent thereto established pursuant to
14 RCW 81.80.400.

15 (11) "Terminal area" means an area including one or more cities or
16 towns and environs adjacent thereto established pursuant to RCW
17 81.80.400.

18 (12) "Common carrier" and "contract carrier" include((s)) persons
19 engaged in the business of providing, contracting for, or undertaking
20 to provide transportation of property for compensation over the public
21 highways of the state of Washington as brokers or forwarders, but do
22 not include armored car services.

23 (13) "Armored car service" means a company operating primarily to
24 transport currency, coins, negotiable instruments, or precious metals.

25 **Sec. 3.** RCW 80.08.100 and 1961 c 14 s 80.08.100 are each amended
26 to read as follows:

27 ~~((All)) If a public service company issues any stock ((and every~~
28 ~~stock certificate)), or other evidence of interest or ownership, ((and~~
29 ~~every)) bond, note, or other evidence of indebtedness((, of a public~~
30 ~~service company, issued without an order of the commission authorizing~~
31 ~~the same then in effect shall be void, and likewise all stock and every~~
32 ~~stock certificate or other evidence of interest or ownership, and every~~
33 ~~bond, note or other evidence of indebtedness, of a public service~~
34 ~~company, issued with the authorization of the commission, but not~~
35 ~~conforming in substance in its provisions to the provisions, if any,~~
36 ~~which it is required by the order of authorization of the commission to~~
37 ~~contain, shall be void; but no failure in any other respect to comply~~
38 ~~with the terms or conditions of the order of authorization of the~~

1 ~~commission and no defect in, or in connection with the application for~~
2 ~~or issuance of, such order shall render void any stock or stock~~
3 ~~certificate or other evidence of interest or ownership, or any bond,~~
4 ~~note or other evidence of indebtedness, except as to a corporation or~~
5 ~~person taking the same otherwise than in good faith and for value and~~
6 ~~without actual notice)) contrary to the provisions of this chapter, the~~
7 ~~company may be subject to penalty under RCW 80.08.110 and 80.08.120.~~

8 **Sec. 4.** RCW 80.08.110 and 1961 c 14 s 80.08.110 are each amended
9 to read as follows:

10 Every public service company which, directly or indirectly, issues
11 or causes to be issued, any stock or stock certificate or other
12 evidence of interest or ownership, or bond, note or other evidence of
13 indebtedness, in nonconformity with ~~((the order of the commission~~
14 ~~authorizing the same, or contrary to))~~ the provisions of this chapter,
15 or which applies the proceeds from the sale thereof, or any part
16 thereof, to any purpose other than the purpose or purposes ~~((specified~~
17 ~~in the commission's order, as herein provided or to any purpose~~
18 ~~specified in the commission's order in excess of the amount in said~~
19 ~~order authorized for such purpose)) allowed by this chapter, shall be
20 subject to a penalty of not more than one thousand dollars for each
21 offense. Every violation ~~((of any such order, rules, direction, demand~~
22 ~~or requirement of the commission, or of any provision of this~~
23 ~~chapter,))~~ shall be a separate and distinct offense and in case of a
24 continuing violation every day's continuance thereof shall be deemed to
25 be a separate and distinct offense.~~

26 The act, omission or failure of any officer, agent or employee of
27 any public service company acting within the scope of his official
28 duties or employment, shall in every case be deemed to be the act,
29 omission or failure of such public service company.

30 **Sec. 5.** RCW 80.08.120 and 1961 c 14 s 80.08.120 are each amended
31 to read as follows:

32 Every officer, agent, or employee of a public service company, and
33 every other person who knowingly authorizes, directs, aids in, issues
34 or executes, or causes to be issued or executed, any stock or stock
35 certificate or other evidence of interest or ownership, or bond, note
36 or other evidence of indebtedness ~~((, in nonconformity with the order of~~
37 ~~the commission authorizing the same, or))~~ contrary to the provisions of

1 this chapter, or who(~~(, in any proceedings before the commission,)~~)
2 knowingly makes any false statement or representation or with knowledge
3 of its falsity files or causes to be filed with the commission any
4 false statement or representation (~~(which said statement or~~
5 ~~representation so made, filed or caused to be filed may tend in any way~~
6 ~~to influence the commission to make an order authorizing the issuance~~
7 ~~of any stock or stock certificate or other evidence of interest or~~
8 ~~ownership, or any bond, note or other evidence of indebtedness, or~~
9 ~~which results in procuring from the commission the making of any such~~
10 ~~order, or who, with knowledge that any false statement or~~
11 ~~representation was made to the commission in any proceedings tending in~~
12 ~~any way to influence the commission to make such order, issues or~~
13 ~~executes or negotiates, or causes to be issued, executed or negotiated~~
14 ~~any such stock or stock certificate or other evidence of interest or~~
15 ~~ownership, or bond, note or other evidence of indebtedness, or who,~~
16 ~~directly or indirectly, knowingly applies)), or causes or assists to be~~
17 ~~applied the proceeds or any part thereof, from the sale of any stock or~~
18 ~~stock certificate or other evidence of interest or ownership, or bond,~~
19 ~~note or other evidence of indebtedness, to any purpose not ((specified~~
20 ~~in the commission's order, or to any purpose specified in the~~
21 ~~commission's order in excess of the amount authorized for such~~
22 ~~purpose)) allowed by this chapter, or who, with knowledge that any~~
23 ~~stock or stock certificate or other evidence of interest or ownership,~~
24 ~~or bond, note or other evidence of indebtedness, has been issued or~~
25 ~~executed in violation of any of the provisions of this chapter,~~
26 ~~negotiates, or causes the same to be negotiated, shall be guilty of a~~
27 ~~gross misdemeanor.~~

28 **Sec. 6.** RCW 80.08.130 and 1961 c 14 s 80.08.130 are each amended
29 to read as follows:

30 ((~~No~~)) Any public service company ((shall henceforth)) that assumes
31 any obligation or liability as guarantor, indorser, surety or otherwise
32 in respect to the securities of any other person, firm or corporation,
33 when such securities are payable at periods of more than twelve months
34 after the date thereof, ((without having first secured from the
35 commission an order authorizing it so to do. Every such assumption
36 made other than in accordance with the order of the commission
37 authorizing the same shall be void)) shall comply with the filing
38 requirements of RCW 80.08.040.

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 80.08 RCW
2 to read as follows:

3 No action by a public service company in compliance with nor by the
4 commission in conformance with the requirements of this chapter may in
5 any way affect the authority of the commission over rates, service,
6 accounts, valuations, estimates, or determinations of costs, or any
7 matters whatsoever that may come before it.

8 NEW SECTION. **Sec. 8.** The following acts or parts of acts are each
9 repealed:

- 10 (1) RCW 80.08.045 and 1987 c 106 s 2;
- 11 (2) RCW 80.08.050 and 1961 c 14 s 80.08.050;
- 12 (3) RCW 80.08.060 and 1961 c 14 s 80.08.060; and
- 13 (4) RCW 80.08.105 and 1983 c 4 s 10 & 1961 c 14 s 80.08.105.

14 **Sec. 9.** RCW 81.08.040 and 1961 c 14 s 81.08.040 are each amended
15 to read as follows:

16 (~~Application for authorization to issue such stocks and stock~~
17 ~~certificates or other evidence of interest or ownership, and bonds,~~
18 ~~notes or other evidences of indebtedness shall be made to the~~
19 ~~commission stating the amount, character, terms and purpose of each~~
20 ~~proposed issue thereof, and stating such other pertinent details as the~~
21 ~~commission may require.~~

22 ~~To enable it to determine whether it will issue such order, the~~
23 ~~commission may hold a hearing and may make such additional inquiry or~~
24 ~~investigation, and examine such witnesses, books, papers, documents and~~
25 ~~contracts, and require the filing of such data as it may deem of~~
26 ~~assistance. The commission may by its order grant permission for the~~
27 ~~issuance of such stocks or stock certificates or other evidence of~~
28 ~~interest or ownership, or bonds, notes or other evidences of~~
29 ~~indebtedness in the amount applied for, or in a lesser amount, or not~~
30 ~~at all, and may attach to the exercise of its permission such condition~~
31 ~~or conditions as it may deem reasonable and necessary.~~

32 ~~If a commission or other agency or agencies is empowered by another~~
33 ~~state to regulate and control the amount and character of securities to~~
34 ~~be issued by any public service company within such other state, then~~
35 ~~the commission shall have the power to agree with such commission or~~
36 ~~other agency or agencies of such other state on the issuance of stocks~~
37 ~~and stock certificates or other evidence of interest or ownership, and~~

1 bonds, notes or other evidences of indebtedness by a public service
2 company owning or operating a public utility both in such state and in
3 this state, and shall have the power to approve such issue jointly with
4 such commission or other agency or agencies and to issue a joint
5 certificate of such approval: PROVIDED, HOWEVER, That no such joint
6 approval shall be required in order to express the consent to and
7 approval of such issue by the state of Washington if said issue is
8 separately approved by the commission.

9 The public service company making the application may have the
10 decision or order of the commission reviewed in the courts in the same
11 manner and by the same procedure as any other order or decision of the
12 commission, when the public service company shall deem such decision or
13 order to be in any respect or manner improper, unjust or
14 unreasonable.)) Any public service company that undertakes to issue
15 stocks, stock certificates, other evidence of interest or ownership,
16 bonds, notes, or other evidences of indebtedness, or to create liens on
17 its property situated within this state shall file with the commission
18 before such issuance or creation:

19 (1) A description of the purposes for which the issuance or
20 creation is made, including a certification by an officer authorized to
21 do so that the proceeds from any such financing is for one or more of
22 the purposes allowed by this chapter;

23 (2) A description of the proposed issuance or creation including
24 the terms of financing; and

25 (3) A statement as to why the transaction is in the public
26 interest.

27 **Sec. 10.** RCW 81.08.100 and 1961 c 14 s 81.08.100 are each amended
28 to read as follows:

29 ((All)) If a public service company issues any stock ((and every)),
30 stock certificate, or other evidence of interest or ownership, ((and
31 every)) bond, note, or other evidence of indebtedness, ((of a public
32 service company, issued without an order of the commission authorizing
33 the same then in effect shall be void, and likewise all stock and every
34 stock certificate or other evidence of interest or ownership, and every
35 bond, note or other evidence of indebtedness, of a public service
36 company, issued with the authorization of the commission, but not
37 conforming in substance in its provisions to the provisions, if any,
38 which it is required by the order of authorization of the commission to

1 contain, shall be void; but no failure in any other respect to comply
2 with the terms or conditions of the order of authorization of the
3 commission and no defect in, or in connection with the application for
4 or issuance of, such order shall render void any stock or stock
5 certificate or other evidence of interest or ownership, or any bond,
6 note or other evidence of indebtedness, except as to a corporation or
7 person taking the same otherwise than in good faith and for value and
8 without actual notice)) contrary to the provisions of this chapter, the
9 company may be subject to penalty under RCW 81.08.110 and 81.08.120.

10 **Sec. 11.** RCW 81.08.110 and 1961 c 14 s 81.08.110 are each amended
11 to read as follows:

12 Every public service company which, directly or indirectly, issues
13 or causes to be issued, any stock or stock certificate or other
14 evidence of interest or ownership, or bond, note or other evidence of
15 indebtedness, in nonconformity with ((~~the order of the commission~~
16 ~~authorizing the same, or contrary to~~)) the provisions of this chapter,
17 or which applies the proceeds from the sale thereof, or any part
18 thereof, to any purpose other than the purpose or purposes ((~~specified~~
19 ~~in the commission's order, as herein provided or to any purpose~~
20 ~~specified in the commission's order in excess of the amount in said~~
21 ~~order authorized for such purpose~~)) allowed by this chapter shall be
22 subject to a penalty of not more than one thousand dollars for each
23 offense. Every violation of any such order, rules, direction, demand
24 or requirement of the department, or of any provision of this chapter,
25 shall be a separate and distinct offense and in case of a continuing
26 violation every day's continuance thereof shall be deemed to be a
27 separate and distinct offense.

28 The act, omission or failure of any officer, agent or employee of
29 any public service company acting within the scope of his official
30 duties or employment, shall in every case be deemed to be the act,
31 omission or failure of such public service company.

32 **Sec. 12.** RCW 81.08.120 and 1961 c 14 s 81.08.120 are each amended
33 to read as follows:

34 Every officer, agent, or employee of a public service company, and
35 every other person who knowingly authorizes, directs, aids in, issues
36 or executes, or causes to be issued or executed, any stock or stock
37 certificate or other evidence of interest or ownership, or bond, note

1 or other evidence of indebtedness(~~(, in nonconformity with the order of~~
2 ~~the commission authorizing the same, or))~~ contrary to the provisions of
3 this chapter, or who(~~(, in any proceedings before the commission,))~~
4 knowingly makes any false statement or representation or with knowledge
5 of its falsity files or causes to be filed with the commission any
6 false statement or representation (~~(which said statement or~~
7 ~~representation so made, filed or caused to be filed may tend in any way~~
8 ~~to influence the commission to make an order authorizing the issuance~~
9 ~~of any stock or stock certificate or other evidence of interest or~~
10 ~~ownership, or any bond, note or other evidence of indebtedness, or~~
11 ~~which results in procuring from the commission the making of any such~~
12 ~~order, or who, with knowledge that any false statement or~~
13 ~~representation was made to the commission in any proceedings tending in~~
14 ~~any way to influence the commission to make such order, issues or~~
15 ~~executes or negotiates, or causes to be issued, executed or negotiated~~
16 ~~any such stock or stock certificate or other evidence of interest or~~
17 ~~ownership, or bond, note or other evidence of indebtedness, or who,~~
18 ~~directly or indirectly, knowingly applies,))~~ or causes or assists to be
19 applied the proceeds or any part thereof, from the sale of any stock or
20 stock certificate or other evidence of interest or ownership, or bond,
21 note or other evidence of indebtedness, to any purpose not (~~(specified~~
22 ~~in the commission's order, or to any purpose specified in the~~
23 ~~commission's order in excess of the amount authorized for such~~
24 ~~purpose,))~~ allowed by this chapter or who, with knowledge that any
25 stock or stock certificate or other evidence of interest or ownership,
26 or bond, note or other evidence of indebtedness, has been issued or
27 executed in violation of any of the provisions of this chapter
28 negotiates, or causes the same to be negotiated, shall be guilty of a
29 gross misdemeanor.

30 **Sec. 13.** RCW 81.08.130 and 1961 c 14 s 81.08.130 are each amended
31 to read as follows:

32 (~~(No))~~ Any public service company (~~(shall henceforth))~~ that assumes
33 any obligation or liability as guarantor, indorser, surety or otherwise
34 in respect to the securities of any other person, firm or corporation,
35 when such securities are payable at periods of more than twelve months
36 after the date thereof, (~~(without having first secured from the~~
37 ~~commission an order authorizing it so to do. Every such assumption~~
38 ~~made other than in accordance with the order of the commission~~

1 ~~authorizing the same shall be void)) shall comply with the filing~~
2 requirements of RCW 81.08.040.

3 NEW SECTION. Sec. 14. A new section is added to chapter 81.08 RCW
4 to read as follows:

5 No action by a public service company in compliance with nor by the
6 commission in conformance with the requirements of this chapter may in
7 any way affect the authority of the commission over rates, service,
8 accounts, valuations, estimates, or determinations of costs, or any
9 matters whatsoever that may come before it.

10 NEW SECTION. Sec. 15. The following acts or parts of acts are
11 each repealed:

- 12 (1) RCW 81.08.010 and 1981 c 13 s 3, 1965 ex.s. c 105 s 3, & 1961
13 c 14 s 81.08.010;
14 (2) RCW 81.08.050 and 1961 c 14 s 81.08.050;
15 (3) RCW 81.08.060 and 1961 c 14 s 81.08.060; and
16 (4) RCW 81.08.105 and 1983 c 4 s 11 & 1961 c 14 s 81.08.105.

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