

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2558

Chapter 251, Laws of 1994

53rd Legislature
1994 Regular Session

UTILITIES AND TRANSPORTATION COMPANIES--SECURITIES
ISSUANCE--REGULATION

EFFECTIVE DATE: 6/9/94

Passed by the House March 7, 1994
Yeas 94 Nays 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Passed by the Senate March 4, 1994
Yeas 49 Nays 0

JOEL PRITCHARD

President of the Senate

Approved April 1, 1994

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2558** as passed by the House of Representatives and the Senate on the dates hereon set forth.

MARILYN SHOWALTER

Chief Clerk

FILED

April 1, 1994 - 11:13 a.m.

**Secretary of State
State of Washington**

HOUSE BILL 2558

AS AMENDED BY THE SENATE

Passed Legislature - 1994 Regular Session

State of Washington 53rd Legislature 1994 Regular Session

By Representative Zellinsky; by request of Utilities & Transportation Commission

Read first time 01/17/94. Referred to Committee on Financial Institutions & Insurance.

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, 80.08.100,
4 80.08.110, 80.08.120, 80.08.130, 81.08.040, 81.08.100, 81.08.110,
5 81.08.120, and 81.08.130; adding a new section to chapter 80.08 RCW;
6 adding a new section to chapter 81.08 RCW; repealing RCW 80.08.045,
7 80.08.050, 80.08.060, 80.08.105, 81.08.050, 81.08.060, and 81.08.105;
8 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.)) Any public service company that undertakes to issue
29 stocks, stock certificates, other evidence of interest or ownership,
30 bonds, notes, or other evidences of indebtedness shall file with the
31 commission before such issuance:

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

36 (2) A description of the proposed issuance including the terms of
37 financing; and

38 (3) A statement as to why the transaction is in the public
39 interest.

1 (4) Any public service company undertaking an issuance and making
2 a filing in conformance with this section may at any time of such
3 filing request the commission to enter a written order that such
4 company has complied with the requirements of this section. The
5 commission shall enter such written order after such company has
6 provided all information and statements required by subsections (1),
7 (2), and (3) of this section.

8 **Sec. 2.** RCW 80.08.100 and 1961 c 14 s 80.08.100 are each amended
9 to read as follows:

10 ~~((All)) If a public service company issues any stock ((and every~~
11 ~~stock certificate)), or other evidence of interest or ownership, ((and~~
12 ~~every)) bond, note, or other evidence of indebtedness((, of a public~~
13 ~~service company, issued without an order of the commission authorizing~~
14 ~~the same then in effect shall be void, and likewise all stock and every~~
15 ~~stock certificate or other evidence of interest or ownership, and every~~
16 ~~bond, note or other evidence of indebtedness, of a public service~~
17 ~~company, issued with the authorization of the commission, but not~~
18 ~~conforming in substance in its provisions to the provisions, if any,~~
19 ~~which it is required by the order of authorization of the commission to~~
20 ~~contain, shall be void; but no failure in any other respect to comply~~
21 ~~with the terms or conditions of the order of authorization of the~~
22 ~~commission and no defect in, or in connection with the application for~~
23 ~~or issuance of, such order shall render void any stock or stock~~
24 ~~certificate or other evidence of interest or ownership, or any bond,~~
25 ~~note or other evidence of indebtedness, except as to a corporation or~~
26 ~~person taking the same otherwise than in good faith and for value and~~
27 ~~without actual notice)) contrary to the provisions of this chapter, the~~
28 company may be subject to penalty under RCW 80.08.110 and 80.08.120.

29 **Sec. 3.** RCW 80.08.110 and 1961 c 14 s 80.08.110 are each amended
30 to read as follows:

31 Every public service company which, directly or indirectly, issues
32 or causes to be issued, any stock or stock certificate or other
33 evidence of interest or ownership, or bond, note or other evidence of
34 indebtedness, in nonconformity with ~~((the order of the commission~~
35 ~~authorizing the same, or contrary to)) the provisions of this chapter,~~
36 or which applies the proceeds from the sale thereof, or any part
37 thereof, to any purpose other than the purpose or purposes ~~((specified~~

1 ~~in the commission's order, as herein provided or to any purpose~~
2 ~~specified in the commission's order in excess of the amount in said~~
3 ~~order authorized for such purpose)) allowed by this chapter, shall be~~
4 subject to a penalty of not more than one thousand dollars for each
5 offense. Every violation (~~(of any such order, rules, direction, demand~~
6 ~~or requirement of the commission, or of any provision of this~~
7 ~~chapter,)) shall be a separate and distinct offense and in case of a~~
8 continuing violation every day's continuance thereof shall be deemed to
9 be a separate and distinct offense.

10 The act, omission or failure of any officer, agent or employee of
11 any public service company acting within the scope of his official
12 duties or employment, shall in every case be deemed to be the act,
13 omission or failure of such public service company.

14 **Sec. 4.** RCW 80.08.120 and 1961 c 14 s 80.08.120 are each amended
15 to read as follows:

16 Every officer, agent, or employee of a public service company, and
17 every other person who knowingly authorizes, directs, aids in, issues
18 or executes, or causes to be issued or executed, any stock or stock
19 certificate or other evidence of interest or ownership, or bond, note
20 or other evidence of indebtedness(~~(, in nonconformity with the order of~~
21 ~~the commission authorizing the same, or)) contrary to the provisions of~~
22 this chapter, or who(~~(, in any proceedings before the commission,))~~
23 knowingly makes any false statement or representation or with knowledge
24 of its falsity files or causes to be filed with the commission any
25 false statement or representation (~~(which said statement or~~
26 ~~representation so made, filed or caused to be filed may tend in any way~~
27 ~~to influence the commission to make an order authorizing the issuance~~
28 ~~of any stock or stock certificate or other evidence of interest or~~
29 ~~ownership, or any bond, note or other evidence of indebtedness, or~~
30 ~~which results in procuring from the commission the making of any such~~
31 ~~order, or who, with knowledge that any false statement or~~
32 ~~representation was made to the commission in any proceedings tending in~~
33 ~~any way to influence the commission to make such order, issues or~~
34 ~~executes or negotiates, or causes to be issued, executed or negotiated~~
35 ~~any such stock or stock certificate or other evidence of interest or~~
36 ~~ownership, or bond, note or other evidence of indebtedness, or who,~~
37 ~~directly or indirectly, knowingly applies)), or causes or assists to be~~
38 applied the proceeds or any part thereof, from the sale of any stock or

1 stock certificate or other evidence of interest or ownership, or bond,
2 note or other evidence of indebtedness, to any purpose not (~~specified~~
3 ~~in the commission's order, or to any purpose specified in the~~
4 ~~commission's order in excess of the amount authorized for such~~
5 ~~purpose~~)) allowed by this chapter, or who, with knowledge that any
6 stock or stock certificate or other evidence of interest or ownership,
7 or bond, note or other evidence of indebtedness, has been issued or
8 executed in violation of any of the provisions of this chapter,
9 negotiates, or causes the same to be negotiated, shall be guilty of a
10 gross misdemeanor.

11 **Sec. 5.** RCW 80.08.130 and 1961 c 14 s 80.08.130 are each amended
12 to read as follows:

13 (~~No~~) Any public service company (~~shall henceforth~~) that assumes
14 any obligation or liability as guarantor, indorser, surety or otherwise
15 in respect to the securities of any other person, firm or corporation,
16 when such securities are payable at periods of more than twelve months
17 after the date thereof, (~~without having first secured from the~~
18 commission an order authorizing it so to do. Every such assumption
19 made other than in accordance with the order of the commission
20 authorizing the same shall be void)) shall comply with the filing
21 requirements of RCW 80.08.040.

22 NEW SECTION. **Sec. 6.** A new section is added to chapter 80.08 RCW
23 to read as follows:

24 No action by a public service company in compliance with nor by the
25 commission in conformance with the requirements of this chapter may in
26 any way affect the authority of the commission over rates, service,
27 accounts, valuations, estimates, or determinations of costs, or any
28 matters whatsoever that may come before it.

29 NEW SECTION. **Sec. 7.** The following acts or parts of acts are each
30 repealed:

- 31 (1) RCW 80.08.045 and 1987 c 106 s 2;
- 32 (2) RCW 80.08.050 and 1961 c 14 s 80.08.050;
- 33 (3) RCW 80.08.060 and 1961 c 14 s 80.08.060; and
- 34 (4) RCW 80.08.105 and 1983 c 4 s 10 & 1961 c 14 s 80.08.105.

1 **Sec. 8.** RCW 81.08.040 and 1961 c 14 s 81.08.040 are each amended
2 to read as follows:

3 (~~Application for authorization to issue such stocks and stock~~
4 ~~certificates or other evidence of interest or ownership, and bonds,~~
5 ~~notes or other evidences of indebtedness shall be made to the~~
6 ~~commission stating the amount, character, terms and purpose of each~~
7 ~~proposed issue thereof, and stating such other pertinent details as the~~
8 ~~commission may require.~~

9 ~~To enable it to determine whether it will issue such order, the~~
10 ~~commission may hold a hearing and may make such additional inquiry or~~
11 ~~investigation, and examine such witnesses, books, papers, documents and~~
12 ~~contracts, and require the filing of such data as it may deem of~~
13 ~~assistance. The commission may by its order grant permission for the~~
14 ~~issuance of such stocks or stock certificates or other evidence of~~
15 ~~interest or ownership, or bonds, notes or other evidences of~~
16 ~~indebtedness in the amount applied for, or in a lesser amount, or not~~
17 ~~at all, and may attach to the exercise of its permission such condition~~
18 ~~or conditions as it may deem reasonable and necessary.~~

19 ~~If a commission or other agency or agencies is empowered by another~~
20 ~~state to regulate and control the amount and character of securities to~~
21 ~~be issued by any public service company within such other state, then~~
22 ~~the commission shall have the power to agree with such commission or~~
23 ~~other agency or agencies of such other state on the issuance of stocks~~
24 ~~and stock certificates or other evidence of interest or ownership, and~~
25 ~~bonds, notes or other evidences of indebtedness by a public service~~
26 ~~company owning or operating a public utility both in such state and in~~
27 ~~this state, and shall have the power to approve such issue jointly with~~
28 ~~such commission or other agency or agencies and to issue a joint~~
29 ~~certificate of such approval: PROVIDED, HOWEVER, That no such joint~~
30 ~~approval shall be required in order to express the consent to and~~
31 ~~approval of such issue by the state of Washington if said issue is~~
32 ~~separately approved by the commission.~~

33 ~~The public service company making the application may have the~~
34 ~~decision or order of the commission reviewed in the courts in the same~~
35 ~~manner and by the same procedure as any other order or decision of the~~
36 ~~commission, when the public service company shall deem such decision or~~
37 ~~order to be in any respect or manner improper, unjust or~~
38 ~~unreasonable.)) Any public service company that undertakes to issue
39 stocks, stock certificates, other evidence of interest or ownership,~~

1 bonds, notes, or other evidences of indebtedness shall file with the
2 commission before such issuance:

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

7 (2) A description of the proposed issuance including the terms of
8 financing; and

9 (3) A statement as to why the transaction is in the public
10 interest.

11 **Sec. 9.** RCW 81.08.100 and 1961 c 14 s 81.08.100 are each amended
12 to read as follows:

13 ~~((All))~~ If a public service company issues any stock ((and every)),
14 stock certificate, or other evidence of interest or ownership, ((and
15 every)) bond, note, or other evidence of indebtedness, ((of a public
16 service company, issued without an order of the commission authorizing
17 the same then in effect shall be void, and likewise all stock and every
18 stock certificate or other evidence of interest or ownership, and every
19 bond, note or other evidence of indebtedness, of a public service
20 company, issued with the authorization of the commission, but not
21 conforming in substance in its provisions to the provisions, if any,
22 which it is required by the order of authorization of the commission to
23 contain, shall be void; but no failure in any other respect to comply
24 with the terms or conditions of the order of authorization of the
25 commission and no defect in, or in connection with the application for
26 or issuance of, such order shall render void any stock or stock
27 certificate or other evidence of interest or ownership, or any bond,
28 note or other evidence of indebtedness, except as to a corporation or
29 person taking the same otherwise than in good faith and for value and
30 without actual notice)) contrary to the provisions of this chapter, the
31 company may be subject to penalty under RCW 81.08.110 and 81.08.120.

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

34 Every public service company which, directly or indirectly, issues
35 or causes to be issued, any stock or stock certificate or other
36 evidence of interest or ownership, or bond, note or other evidence of
37 indebtedness, in nonconformity with ~~((the order of the commission~~

1 authorizing the same, or contrary to)) the provisions of this chapter,
2 or which applies the proceeds from the sale thereof, or any part
3 thereof, to any purpose other than the purpose or purposes (~~specified~~
4 ~~in the commission's order, as herein provided or to any purpose~~
5 ~~specified in the commission's order in excess of the amount in said~~
6 ~~order authorized for such purpose~~) allowed by this chapter shall be
7 subject to a penalty of not more than one thousand dollars for each
8 offense. Every violation of any such order, rules, direction, demand
9 or requirement of the department, or of any provision of this chapter,
10 shall be a separate and distinct offense and in case of a continuing
11 violation every day's continuance thereof shall be deemed to be a
12 separate and distinct offense.

13 The act, omission or failure of any officer, agent or employee of
14 any public service company acting within the scope of his official
15 duties or employment, shall in every case be deemed to be the act,
16 omission or failure of such public service company.

17 **Sec. 11.** RCW 81.08.120 and 1961 c 14 s 81.08.120 are each amended
18 to read as follows:

19 Every officer, agent, or employee of a public service company, and
20 every other person who knowingly authorizes, directs, aids in, issues
21 or executes, or causes to be issued or executed, any stock or stock
22 certificate or other evidence of interest or ownership, or bond, note
23 or other evidence of indebtedness(~~(, in nonconformity with the order of~~
24 ~~the commission authorizing the same, or))~~ contrary to the provisions of
25 this chapter, or who(~~(, in any proceedings before the commission,)~~)
26 knowingly makes any false statement or representation or with knowledge
27 of its falsity files or causes to be filed with the commission any
28 false statement or representation ((~~which said statement or~~
29 ~~representation so made, filed or caused to be filed may tend in any way~~
30 ~~to influence the commission to make an order authorizing the issuance~~
31 ~~of any stock or stock certificate or other evidence of interest or~~
32 ~~ownership, or any bond, note or other evidence of indebtedness, or~~
33 ~~which results in procuring from the commission the making of any such~~
34 ~~order, or who, with knowledge that any false statement or~~
35 ~~representation was made to the commission in any proceedings tending in~~
36 ~~any way to influence the commission to make such order, issues or~~
37 ~~executes or negotiates, or causes to be issued, executed or negotiated~~
38 ~~any such stock or stock certificate or other evidence of interest or~~

1 ownership, or bond, note or other evidence of indebtedness, or who,
2 directly or indirectly, knowingly applies,)) or causes or assists to be
3 applied the proceeds or any part thereof, from the sale of any stock or
4 stock certificate or other evidence of interest or ownership, or bond,
5 note or other evidence of indebtedness, to any purpose not ((specified
6 in the commission's order, or to any purpose specified in the
7 commission's order in excess of the amount authorized for such
8 purpose,)) allowed by this chapter or who, with knowledge that any
9 stock or stock certificate or other evidence of interest or ownership,
10 or bond, note or other evidence of indebtedness, has been issued or
11 executed in violation of any of the provisions of this chapter
12 negotiates, or causes the same to be negotiated, shall be guilty of a
13 gross misdemeanor.

14 **Sec. 12.** RCW 81.08.130 and 1961 c 14 s 81.08.130 are each amended
15 to read as follows:

16 ((No)) Any public service company ((shall henceforth)) that assumes
17 any obligation or liability as guarantor, indorser, surety or otherwise
18 in respect to the securities of any other person, firm or corporation,
19 when such securities are payable at periods of more than twelve months
20 after the date thereof, ((without having first secured from the
21 commission an order authorizing it so to do. Every such assumption
22 made other than in accordance with the order of the commission
23 authorizing the same shall be void)) shall comply with the filing
24 requirements of RCW 81.08.040.

25 NEW SECTION. **Sec. 13.** A new section is added to chapter 81.08 RCW
26 to read as follows:

27 No action by a public service company in compliance with nor by the
28 commission in conformance with the requirements of this chapter may in
29 any way affect the authority of the commission over rates, service,
30 accounts, valuations, estimates, or determinations of costs, or any
31 matters whatsoever that may come before it.

32 NEW SECTION. **Sec. 14.** The following acts or parts of acts are
33 each repealed:

- 34 (1) RCW 81.08.050 and 1961 c 14 s 81.08.050;
35 (2) RCW 81.08.060 and 1961 c 14 s 81.08.060; and
36 (3) RCW 81.08.105 and 1983 c 4 s 11 & 1961 c 14 s 81.08.105.

Passed the House March 7, 1994.
Passed the Senate March 4, 1994.
Approved by the Governor April 1, 1994.
Filed in Office of Secretary of State April 1, 1994.