

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 5034

62nd Legislature
2011 Regular Session

Passed by the Senate April 14, 2011
YEAS 45 NAYS 2

President of the Senate

Passed by the House April 5, 2011
YEAS 95 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5034** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 5034

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By Senate Environment, Water & Energy (originally sponsored by Senators Kilmer, Kastama, Shin, Hatfield, Zarelli, Conway, and Hewitt)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to private infrastructure development; amending RCW
2 80.04.010, 80.04.110, 80.04.160, 80.04.250, 80.04.500, 80.28.010,
3 80.28.020, 80.28.030, 80.28.040, 80.28.050, 80.28.060, 80.28.080,
4 80.28.090, 80.28.100, 80.28.110, 80.28.120, 80.28.130, 80.28.185,
5 80.28.240, 80.28.270, 80.28.275, 7.60.025, and 36.94.110; adding new
6 sections to chapter 80.28 RCW; adding a new section to chapter 80.04
7 RCW; creating new sections; and providing an effective date.

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

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

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

1 As used in this title, unless specifically defined otherwise or
2 unless the context indicates otherwise:

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

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

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

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

14 (5) "Competitive telecommunications company" means a
15 telecommunications company which has been classified as such by the
16 commission pursuant to RCW 80.36.320.

17 (6) "Competitive telecommunications service" means a service which
18 has been classified as such by the commission pursuant to RCW
19 80.36.330.

20 (7) "Corporation" includes a corporation, company, association or
21 joint stock association.

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

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

28 (10) "Gas company" includes every corporation, company,
29 association, joint stock association, partnership and person, their
30 lessees, trustees or receiver appointed by any court whatsoever, and
31 every city or town, owning, controlling, operating or managing any gas
32 plant within this state.

33 (11) "Electric plant" includes all real estate, fixtures and
34 personal property operated, owned, used or to be used for or in
35 connection with or to facilitate the generation, transmission,
36 distribution, sale or furnishing of electricity for light, heat, or
37 power for hire; and any conduits, ducts or other devices, materials,

1 apparatus or property for containing, holding or carrying conductors
2 used or to be used for the transmission of electricity for light, heat
3 or power.

4 (12) "Electrical company" includes any corporation, company,
5 association, joint stock association, partnership and person, their
6 lessees, trustees or receivers appointed by any court whatsoever (other
7 than a railroad or street railroad company generating electricity
8 solely for railroad or street railroad purposes or for the use of its
9 tenants and not for sale to others), and every city or town owning,
10 operating or managing any electric plant for hire within this state.
11 "Electrical company" does not include a company or person employing a
12 cogeneration facility solely for the generation of electricity for its
13 own use or the use of its tenants or for sale to an electrical company,
14 state or local public agency, municipal corporation, or quasi municipal
15 corporation engaged in the sale or distribution of electrical energy,
16 but not for sale to others, unless such company or person is otherwise
17 an electrical company.

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

20 (14) "Private telecommunications system" means a telecommunications
21 system controlled by a person or entity for the sole and exclusive use
22 of such person, entity, or affiliate thereof, including the provision
23 of private shared telecommunications services by such person or entity.
24 "Private telecommunications system" does not include a system offered
25 for hire, sale, or resale to the general public.

26 (15) "Private shared telecommunications services" includes the
27 provision of telecommunications and information management services and
28 equipment within a user group located in discrete private premises in
29 building complexes, campuses, or high-rise buildings, by a commercial
30 shared services provider or by a user association, through privately
31 owned customer premises equipment and associated data processing and
32 information management services and includes the provision of
33 connections to the facilities of a local exchange and to interexchange
34 telecommunications companies.

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

1 (17) "Radio communications service company" includes every
2 corporation, company, association, joint stock association,
3 partnership, and person, their lessees, trustees, or receivers
4 appointed by any court, and every city or town making available
5 facilities to provide radio communications service, radio paging, or
6 cellular communications service for hire, sale, or resale.

7 (18) "Telecommunications company" includes every corporation,
8 company, association, joint stock association, partnership and person,
9 their lessees, trustees or receivers appointed by any court whatsoever,
10 and every city or town owning, operating or managing any facilities
11 used to provide telecommunications for hire, sale, or resale to the
12 general public within this state.

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

15 (20) "Facilities" means lines, conduits, ducts, poles, wires,
16 cables, cross-arms, receivers, transmitters, instruments, machines,
17 appliances, instrumentalities and all devices, real estate, easements,
18 apparatus, property and routes used, operated, owned or controlled by
19 any telecommunications company to facilitate the provision of
20 telecommunications service.

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

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

33 (23)(a) "Water company" includes every corporation, company,
34 association, joint stock association, partnership and person, their
35 lessees, trustees or receivers appointed by any court whatsoever, and
36 every city or town owning, controlling, operating, or managing any
37 water system for hire within this state(~~(:—PROVIDED, That)~~).

1 (b) For purposes of commission jurisdiction (~~it shall~~), "water
2 company" does not include any water system serving less than one
3 hundred customers where the average annual gross revenue per customer
4 does not exceed three hundred dollars per year, which revenue figure
5 may be increased annually by the commission by rule adopted pursuant to
6 chapter 34.05 RCW to reflect the rate of inflation as determined by the
7 implicit price deflator of the United States department of commerce(~~+~~
8 ~~AND PROVIDED FURTHER, That such~~). The measurement of customers or
9 revenues (~~shall~~) must include all portions of water companies having
10 common ownership or control, regardless of location or corporate
11 designation.

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

16 (d) "Water company" also includes, for auditing purposes only,
17 nonmunicipal water systems which are referred to the commission
18 pursuant to an administrative order from the department, or the city or
19 county as provided in RCW 80.04.110. (~~However,~~)

20 (e) Water companies exempt from commission regulation (~~shall be~~)
21 are subject to the provisions of chapter 19.86 RCW. A water company
22 cannot be removed from regulation except with the approval of the
23 commission. Water companies subject to regulation may petition the
24 commission for removal from regulation if the number of customers falls
25 below one hundred or the average annual revenue per customer falls
26 below three hundred dollars. The commission is authorized to maintain
27 continued regulation if it finds that the public interest so requires.

28 (24) "Cogeneration facility" means any machinery, equipment,
29 structure, process, or property, or any part thereof, installed or
30 acquired for the primary purpose of the sequential generation of
31 electrical or mechanical power and useful heat from the same primary
32 energy source or fuel.

33 (25) "Public service company" includes every gas company,
34 electrical company, telecommunications company, wastewater company, and
35 water company. Ownership or operation of a cogeneration facility does
36 not, by itself, make a company or person a public service company.

37 (26) "Local exchange company" means a telecommunications company
38 providing local exchange telecommunications service.

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

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

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

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

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

18 NEW SECTION. Sec. 3. A new section is added to chapter 80.28 RCW
19 to read as follows:

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

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

26 (a) A comprehensive business plan detailing the design,
27 construction, operation, and maintenance of the proposed service
28 system;

29 (b) Demonstration of sufficient financial resources to properly
30 operate and maintain the proposed system, and to replace and upgrade
31 capital assets;

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

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

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

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

4 (3) The commission may, after providing notice and an opportunity
5 for public comment, issue certificates, or for good cause shown refuse
6 to issue them, or issue them for the partial exercise only of the
7 privilege sought, and may attach to the exercise of the rights granted
8 such terms and conditions as, in its judgment, the public convenience
9 and necessity may require.

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

12 (5)(a) Prior to the commission approving a wastewater company to
13 provide new service or extend existing service, the wastewater company
14 must file and continuously maintain in effect, a bond, or equivalent
15 surety as determined by the commission, with the commission to ensure
16 that there are sufficient funds to:

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

18 (ii) Replace and upgrade capital assets as required by federal or
19 state law or by order of the department of health or department of
20 ecology; and

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

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

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

27 (ii) Notice that the wastewater company does not intend to renew
28 the bond or its equivalent surety or has failed to renew the bond or
29 its equivalent surety; or

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

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

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

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

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

7 (1) Every wastewater company subject to regulation by the
8 commission must, on or before the date specified by the commission for
9 filing annual reports under RCW 80.04.080, pay to the commission a
10 regulatory fee.

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

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

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

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

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

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

26 (1) If the commission determines, after providing notice and
27 opportunity for a hearing in the manner required for complaints under
28 RCW 80.04.110, that a wastewater company is unfit to provide wastewater
29 service on any system of sewerage, under its ownership, the commission
30 may order the transfer of any such system or systems to a capable
31 wastewater company.

32 (2) In determining whether a wastewater company is unfit to provide
33 wastewater service on a system of sewerage in consultation with the
34 department of health or the department of ecology as appropriate to the
35 agencies' jurisdiction, the commission may consider the company's
36 technical and managerial expertise to operate the system of sewerage,

1 the company's financial soundness and the company's willingness and
2 ability to make ongoing investments necessary to maintain compliance
3 with statutory and regulatory standards for the safety, adequacy,
4 efficiency, and reasonableness of the service provided.

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

8 (a) Alternatives to the transfer are impractical or not
9 economically feasible;

10 (b) The acquiring wastewater company is willing and able to acquire
11 the system or systems of sewerage, financially sound, and has the
12 technical and managerial expertise to own and operate the system or
13 systems of sewerage in compliance with applicable statutory and
14 regulatory standards; and

15 (c) Rates paid by existing customers served by the acquiring
16 wastewater company will not increase unreasonably because of the
17 acquisition of the system of sewerage or because of expenditures that
18 may be necessary to assure compliance with applicable statutory and
19 regulatory standards for the safety, adequacy, efficiency, and
20 reasonableness of the service provided.

21 (4) The sale price for the unfit wastewater company's system or
22 systems of sewerage assets must be determined by agreement between the
23 unfit wastewater company and the acquiring capable wastewater company
24 subject to a finding by the commission that the agreed price is
25 reasonable. A price is deemed reasonable if it does not exceed the
26 original cost of plant in service, minus accumulated depreciation,
27 minus contributions in aid to construction. If the unfit wastewater
28 company and the acquiring capable wastewater company are unable to
29 agree on the sale price or the commission finds that the agreed sale
30 price is not reasonable, the acquiring capable wastewater company may
31 initiate a condemnation proceeding in superior court in the manner
32 provided by chapter 8.04 RCW to determine the compensation to be paid
33 by the acquiring capable wastewater company for the failed system or
34 systems of sewerage assets.

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

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

5 (7) Any capable wastewater company approved by the commission to
6 acquire the system or systems of sewerage of an unfit wastewater
7 company must submit to the commission, for approval, a financial plan,
8 including a timetable, for bringing the acquired system of sewerage
9 assets into compliance with applicable statutory and regulatory
10 standards. The acquiring capable wastewater company must also provide
11 a copy of the plan to the department of health or the department of
12 ecology, as appropriate to the agencies' jurisdiction, and other state
13 or local agency as the commission may direct. The commission must give
14 the department of health or the department of ecology, as appropriate
15 to the agencies' jurisdiction, adequate opportunity to comment on the
16 plan and must consider any comments submitted in deciding whether or
17 not to approve the plan.

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

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

28 (1) The commission may petition the Thurston county superior court
29 pursuant to chapter 7.60 RCW to place a wastewater company in
30 receivership. The petition must include the names of one or more
31 qualified candidates for receiver who have consented to assume
32 operation of the system of sewerage. The petition must also include a
33 list of interested and qualified individuals, municipal corporations,
34 and wastewater companies with experience in providing wastewater
35 service and a history of satisfactory operation of a system of
36 sewerage. If no other entity is willing and able to be appointed as
37 the receiver, the court must appoint the county or other municipal

1 corporation whose geographic boundaries include, in whole or in part,
2 the system of sewerage at issue. The municipal corporation may
3 designate one of its agencies or divisions to operate the system, or it
4 may contract with another entity to operate the system. The department
5 of health or department of ecology, whichever has jurisdiction, must
6 provide regulatory oversight for managing the system of sewerage.

7 (2) In any petition for receivership under subsection (1) of this
8 section, the commission must recommend that the court grant the
9 receiver full authority to act in the best interests of the customers
10 served by the system of sewerage. The receiver must assess the
11 capability, in conjunction with the department of health or ecology,
12 whichever has jurisdiction, and local government, for the system to
13 operate in compliance with health and safety standards. The receiver
14 must report to the court and the commission its recommendations for the
15 company's future operation of the system, including the formation of a
16 water-sewer district or other public entity, or ownership by another
17 existing wastewater company capable of providing service.

18 (3) If a petition for receivership and verifying affidavit executed
19 by an appropriate official allege an immediate and serious danger to
20 residents constituting an emergency, the court must set the matter for
21 hearing within three days and may appoint a temporary receiver ex parte
22 upon the strength of such petition and affidavit pending a full
23 evidentiary hearing, which must be held within fourteen days after
24 receipt of the petition.

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

32 (5) The court must authorize the receiver to impose reasonable
33 assessments on the customers of the system of sewerage to recover
34 expenditures for improvements necessary for the public health and
35 safety.

36 (6) The commission must develop a plan for transfer of the system
37 of sewerage to a new operator and submit its plan to the court. The
38 commission must develop the plan after notice to, and an opportunity to

1 participate by, the receiver, the municipal corporations whose
2 geographic boundaries, in whole or in part, include the system of
3 sewerage at issue, and the public. The commission must complete the
4 plan no later than twelve months after appointment of a receiver.

5 (a) If the commission finds that no private entity is able or
6 willing to take over the system of sewerage and decides the system of
7 sewerage should be taken over by a municipal corporation whose
8 geographic boundaries include the system of sewerage at issue, in whole
9 or in part, the commission must provide its findings to the court and
10 the court may issue an order to that effect. If the court orders a
11 municipal corporation to take over the system of sewerage, the
12 municipal corporation must promptly institute negotiations to purchase
13 the system. If, within six months of the court's order, the
14 negotiations fail or otherwise do not result in a purchase, the
15 municipal corporation must promptly initiate a condemnation proceeding
16 to acquire the system. The court must terminate the receivership once
17 the purchase is complete.

18 (b) If the commission decides the system of sewerage should be
19 taken over by a private entity, such as an individual or business, the
20 commission must provide its findings to the court and the court may
21 issue an order to that effect. If the court orders a private entity to
22 take over the system of sewerage, the private entity must promptly
23 institute negotiations to purchase the system. If, within six months
24 of the court's order, the negotiations fail or otherwise do not result
25 in a purchase, the private entity must promptly exercise its power of
26 eminent domain granted by the legislature in subsection (9) of this
27 section to acquire the system. The court must terminate the
28 receivership once the purchase is complete.

29 (7) Other than pursuant to subsection (6)(a) and (b) of this
30 section, the court may not terminate the receivership, and order the
31 return of the system to the owners, unless the commission approves that
32 action. The court may impose reasonable conditions upon the return of
33 the system to the owner, including the posting of a bond or other
34 security, routine performance and financial audits, employment of
35 qualified operators and other staff or contracted services, compliance
36 with financial viability requirements, or other measures sufficient to
37 ensure the ongoing proper operation of the system.

1 (8) If, as part of the ultimate disposition of the system, a
2 condemnation proceeding is commenced to acquire the system of sewerage,
3 the court shall oversee any appraisal of the system conducted under
4 Title 7 RCW to assure that the appraised value properly reflects any
5 reduced value because of the necessity to make improvements to the
6 system. The court has the authority to approve the appraisal and to
7 modify the appraisal based on any information provided at an
8 evidentiary hearing. The court's determination of the proper value of
9 the system, based on the appraisal, is final and only appealable if not
10 supported by substantial evidence. If the appraised value is appealed,
11 the court may order the system's ownership to be transferred upon
12 payment of the approved appraised value.

13 (9) The legislature grants any municipal corporation, and any
14 private entity the power of eminent domain under the circumstances
15 described in this section. However, a private entity must obtain
16 authorization from the city, town, or county with jurisdiction over the
17 subject property after the legislative authority of the city, town, or
18 county has passed an ordinance requiring that property be taken for
19 public use. This subsection does not limit eminent domain authority
20 granted by any other provision of law.

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

23 (1)(a) Complaint may be made by the commission of its own motion or
24 by any person or corporation, chamber of commerce, board of trade, or
25 any commercial, mercantile, agricultural or manufacturing society, or
26 any body politic or municipal corporation, or by the public counsel
27 section of the office of the attorney general, or its successor, by
28 petition or complaint in writing, setting forth any act or thing done
29 or omitted to be done by any public service corporation in violation,
30 or claimed to be in violation, of any provision of (~~law~~) this title,
31 Title 81 RCW, or of any order or rule of the commission(~~(:—PROVIDED,~~
32 ~~That))~~).

33 (b) No complaint (~~shall~~) may be entertained by the commission
34 except upon its own motion, as to the reasonableness of the schedule of
35 the rates or charges of any gas company, electrical company, water
36 company, wastewater company, or telecommunications company, unless the
37 same be signed by the mayor, council or commission of the city or town

1 in which the company complained of is engaged in business, or not less
2 than twenty-five consumers or purchasers of such gas, electricity,
3 water, wastewater company services, or telecommunications service, or
4 at least twenty-five percent of the consumers or purchasers of the
5 company's service(~~(:—PROVIDED, FURTHER, That)~~).

6 (c) When two or more public service corporations, (meaning to
7 exclude municipal and other public corporations) are engaged in
8 competition in any locality or localities in the state, either may make
9 complaint against the other or others that the rates, charges, rules,
10 regulations or practices of such other or others with or in respect to
11 which the complainant is in competition, are unreasonable,
12 unremunerative, discriminatory, illegal, unfair or intending or tending
13 to oppress the complainant, to stifle competition, or to create or
14 encourage the creation of monopoly, and upon such complaint or upon
15 complaint of the commission upon its own motion, the commission (~~shall~~
16 ~~have~~) has power, after notice and hearing as in other cases, to, by
17 its order, subject to appeal as in other cases, correct the abuse
18 complained of by establishing such uniform rates, charges, rules,
19 regulations or practices in lieu of those complained of, to be observed
20 by all of such competing public service corporations in the locality or
21 localities specified as (~~shall be~~) is found reasonable, remunerative,
22 nondiscriminatory, legal, and fair or tending to prevent oppression or
23 monopoly or to encourage competition, and upon any such hearing it
24 (~~shall be~~) is proper for the commission to take into consideration
25 the rates, charges, rules, regulations and practices of the public
26 service corporation or corporations complained of in any other locality
27 or localities in the state.

28 (2) All matters upon which complaint may be founded may be joined
29 in one hearing, and no motion (~~shall~~) may be entertained against a
30 complaint for misjoinder of complaints or grievances or misjoinder of
31 parties; and in any review of the courts of orders of the commission
32 the same rule shall apply and pertain with regard to the joinder of
33 complaints and parties as herein provided(~~(:—PROVIDED,)~~). However,
34 all grievances to be inquired into (~~shall~~) must be plainly set forth
35 in the complaint. No complaint (~~shall~~) may be dismissed because of
36 the absence of direct damage to the complainant.

37 (3) Upon the filing of a complaint, the commission shall cause a
38 copy thereof to be served upon the person or corporation complained of,

1 which (~~shall~~) must be accompanied by a notice fixing the time when
2 and place where a hearing will be had upon such complaint. The time
3 fixed for such hearing (~~shall~~) may not be less than ten days after
4 the date of the service of such notice and complaint, excepting as
5 herein provided. The commission shall enter its final order with
6 respect to a complaint filed by any entity or person other than the
7 commission within ten months from the date of filing of the complaint,
8 unless the date is extended for cause. Rules of practice and procedure
9 not otherwise provided for in this title may be prescribed by the
10 commission. Such rules may include the requirement that a complainant
11 use informal processes before filing a formal complaint.

12 (4)(a) The commission (~~shall~~) may, as appropriate, audit a
13 nonmunicipal water system upon receipt of an administrative order from
14 the department, or the city or county in which the water system is
15 located, finding that the water delivered by a system does not meet
16 state board of health standards adopted under RCW 43.20.050(2)(a) or
17 standards adopted under chapters 70.116 and 70.119A RCW, and the
18 results of the audit (~~shall~~) must be provided to the requesting
19 department, city, or county. However, the number of nonmunicipal water
20 systems referred to the commission in any one calendar year shall not
21 exceed twenty percent of the water companies subject to commission
22 regulation as defined in RCW 80.04.010.

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

27 (5) Any customer or purchaser of service from a water system or
28 company that is subject to commission regulation may file a complaint
29 with the commission if he or she has reason to believe that the water
30 delivered by the system to the customer does not meet state drinking
31 water standards under chapter 43.20 or 70.116 RCW. The commission
32 shall investigate such a complaint, and shall request that the state
33 department of health or local health department of the county in which
34 the system is located test the water for compliance with state drinking
35 water standards, and provide the results of such testing to the
36 commission. The commission may decide not to investigate the complaint
37 if it determines that the complaint has been filed in bad faith, or for
38 the purpose of harassment of the water system or company, or for other

1 reasons has no substantial merit. The water system or company shall
2 bear the expense for the testing. After the commission has received
3 the complaint from the customer and during the pendency of the
4 commission investigation, the water system or company (~~shall~~) may not
5 take any steps to terminate service to the customer or to collect any
6 amounts alleged to be owed to the company by the customer. The
7 commission may issue an order or take any other action to ensure that
8 no such steps are taken by the system or company. The customer may, at
9 the customer's option and expense, obtain a water quality test by a
10 licensed or otherwise qualified water testing laboratory, of the water
11 delivered to the customer by the water system or company, and provide
12 the results of such a test to the commission. If the commission
13 determines that the water does not meet state drinking water standards,
14 it shall exercise its authority over the system or company as provided
15 in this title, and may, where appropriate, order a refund to the
16 customer on a pro rata basis for the substandard water delivered to the
17 customer, and shall order reimbursement to the customer for the cost
18 incurred by the customer, if any, in obtaining a water quality test.

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

21 The commission is hereby authorized and empowered to adopt,
22 promulgate and issue rules and regulations covering the transmission
23 and delivery of messages and conversations, and the furnishing and
24 supply of gas, electricity, wastewater company services, and water, and
25 any and all services concerning the same, or connected therewith; and
26 generally such rules as pertain to the comfort and convenience of the
27 public concerning the subjects treated of in this title. Such rules
28 and regulations (~~shall~~) must be promulgated and issued by the
29 commission on its own motion, and (~~shall~~) must be served on the
30 public service company affected thereby as other orders of the
31 commission are served. Any public service company affected thereby,
32 and deeming such rules and regulations, or any of them, improper,
33 unjust, unreasonable, or contrary to law, may within twenty days from
34 the date of service of such order upon it file objections thereto with
35 the commission, specifying the particular grounds of such objections.
36 The commission shall, upon receipt of such objections, fix a time and
37 place for hearing the same, and after a full hearing may make such

1 changes or modifications thereto, if any, as the evidence may justify.
2 The commission (~~shall have~~) has, and it is hereby given, power to
3 adopt rules to govern its proceedings, and to regulate the mode and
4 manner of all investigations and hearings(~~(:-PROVIDED,)~~). However, no
5 person desiring to be present at such hearing (~~shall~~) may be denied
6 permission. Actions may be instituted to review rules and regulations
7 promulgated under this section as in the case of orders of the
8 commission.

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

11 (1) The commission (~~shall have~~) has power upon complaint or upon
12 its own motion to ascertain and determine the fair value for rate
13 making purposes of the property of any public service company used and
14 useful for service in this state and shall exercise such power whenever
15 it (~~shall~~) deems such valuation or determination necessary or proper
16 under any of the provisions of this title. In determining what
17 property is used and useful for providing electric, gas, wastewater
18 company services, or water service, the commission may include the
19 reasonable costs of construction work in progress to the extent that
20 the commission finds that inclusion is in the public interest.

21 (2) The commission (~~shall have~~) has the power to make
22 revaluations of the property of any public service company from time to
23 time.

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

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

34 Nothing in this title (~~shall~~) authorizes the commission to make
35 or enforce any order affecting rates, tolls, rentals, contracts or
36 charges or service rendered, or the adequacy or sufficiency of the

1 facilities, equipment, instrumentalities or buildings, or the
2 reasonableness of rules or regulations made, furnished, used, supplied
3 or in force affecting any telecommunications line, gas plant,
4 electrical plant, system of sewerage, or water system owned and
5 operated by any city or town, or to make or enforce any order relating
6 to the safety of any telecommunications line, electrical plant, system
7 of sewerage, or water system owned and operated by any city or town,
8 but all other provisions enumerated herein (~~shall~~) apply to public
9 utilities owned by any city or town.

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

12 (1) All charges made, demanded or received by any gas company,
13 electrical company, wastewater company, or water company for gas,
14 electricity or water, or for any service rendered or to be rendered in
15 connection therewith, shall be just, fair, reasonable and sufficient.
16 Reasonable charges necessary to cover the cost of administering the
17 collection of voluntary donations for the purposes of supporting the
18 development and implementation of evergreen community management plans
19 and ordinances under RCW 80.28.300 (~~shall~~) must be deemed as prudent
20 and necessary for the operation of a utility.

21 (2) Every gas company, electrical company, wastewater company, and
22 water company shall furnish and supply such service, instrumentalities
23 and facilities as shall be safe, adequate and efficient, and in all
24 respects just and reasonable.

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

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

31 (a) Notifies the utility of the inability to pay the bill,
32 including a security deposit. This notice should be provided within
33 five business days of receiving a payment overdue notice unless there
34 are extenuating circumstances. If the customer fails to notify the
35 utility within five business days and service is terminated, the
36 customer can, by paying reconnection charges, if any, and fulfilling

1 the requirements of this section, receive the protections of this
2 chapter;

3 (b) Provides self-certification of household income for the prior
4 twelve months to a grantee of the department of (~~community, trade, and~~
5 ~~economic development~~) commerce, which administers federally funded
6 energy assistance programs. The grantee shall determine that the
7 household income does not exceed the maximum allowed for eligibility
8 under the state's plan for low-income energy assistance under 42 U.S.C.
9 8624 and shall provide a dollar figure that is seven percent of
10 household income. The grantee may verify information provided in the
11 self-certification;

12 (c) Has applied for home heating assistance from applicable
13 government and private sector organizations and certifies that any
14 assistance received will be applied to the current bill and future
15 utility bills;

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

19 (e) Agrees to a payment plan and agrees to maintain the payment
20 plan. The plan will be designed both to pay the past due bill by the
21 following October 15th and to pay for continued utility service. If
22 the past due bill is not paid by the following October 15, the customer
23 (~~shall~~) is not (~~be~~) eligible for protections under this chapter
24 until the past due bill is paid. The plan (~~shall~~) may not require
25 monthly payments in excess of seven percent of the customer's monthly
26 income plus one-twelfth of any arrearage accrued from the date
27 application is made and thereafter during November 15 through March 15.
28 A customer may agree to pay a higher percentage during this period, but
29 shall not be in default unless payment during this period is less than
30 seven percent of monthly income plus one-twelfth of any arrearage
31 accrued from the date application is made and thereafter. If
32 assistance payments are received by the customer subsequent to
33 implementation of the plan, the customer shall contact the utility to
34 reformulate the plan; and

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

36 (5) The utility shall:

37 (a) Include in any notice that an account is delinquent and that

1 service may be subject to termination, a description of the customer's
2 duties in this section;

3 (b) Assist the customer in fulfilling the requirements under this
4 section;

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

8 (d) Be permitted to disconnect service if the customer fails to
9 honor the payment program. Utilities may continue to disconnect
10 service for those practices authorized by law other than for nonpayment
11 as provided for in this subsection. Customers who qualify for payment
12 plans under this section who default on their payment plans and are
13 disconnected can be reconnected and maintain the protections afforded
14 under this chapter by paying reconnection charges, if any, and by
15 paying all amounts that would have been due and owing under the terms
16 of the applicable payment plan, absent default, on the date on which
17 service is reconnected; and

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

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

23 (7) Every gas company and electrical company shall offer
24 residential customers the option of a budget billing or equal payment
25 plan. The budget billing or equal payment plan shall be offered low-
26 income customers eligible under the state's plan for low-income energy
27 assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without
28 limiting availability to certain months of the year, without regard to
29 the length of time the customer has occupied the premises, and without
30 regard to whether the customer is the tenant or owner of the premises
31 occupied.

32 (8) Every gas company, electrical company, wastewater company, and
33 water company shall construct and maintain such facilities in
34 connection with the manufacture and distribution of its product, or
35 provision of its services, as will be efficient and safe to its
36 employees and the public.

37 (9) An agreement between the customer and the utility, whether oral

1 or written, (~~shall~~) does not waive the protections afforded under
2 this chapter.

3 (10) In establishing rates or charges for water service, water
4 companies as defined in RCW 80.04.010 may consider the achievement of
5 water conservation goals and the discouragement of wasteful water use
6 practices.

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

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

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

24 (1) Whenever the commission (~~shall~~) finds, after such hearing,
25 that the illuminating or heating power, purity or pressure of gas, the
26 efficiency of electric lamp supply, the voltage of the current supplied
27 for light, heat or power, the quality of wastewater company services,
28 or the purity, quality, volume, and pressure of water, supplied by any
29 gas company, electrical company, wastewater company, or water company,
30 as the case may be, is insufficient, impure, inadequate or inefficient,
31 it shall order such improvement in the manufacture, distribution or
32 supply of gas, in the manufacture, transmission or supply of
33 electricity, in the operation of the services and facilities of
34 wastewater companies, or in the storage, distribution or supply of
35 water, or in the methods employed by such gas company, electrical
36 company, wastewater company, or water company, as will in its judgment

1 be efficient, adequate, just and reasonable. Failure of a water
2 company to comply with state board of health standards adopted under
3 RCW 43.20.050(2)(a) or department standards adopted under chapter
4 70.116 RCW for purity, volume, and pressure (~~shall be~~) is prima facie
5 evidence that the water supplied is insufficient, impure, inadequate,
6 or inefficient. Failure of a wastewater company to comply with
7 standards and permit conditions adopted and implemented under chapter
8 70.118B or 90.48 RCW for treatment and disposal of sewerage, is prima
9 facie evidence that the system of sewerage is insufficient, inadequate,
10 or inefficient.

11 (2) In ordering improvements in the storage, distribution, or
12 supply of water, the commission shall consult and coordinate with the
13 department of health. In the event that a water company fails to
14 comply with an order of the commission (~~in a timely fashion~~) within
15 the deadline specified in the order, the commission may request that
16 the department petition the superior court of Thurston county to place
17 the company in receivership pursuant to chapter 7.60 RCW.

18 (3) In ordering improvements to the system of sewerage, the
19 commission shall consult and coordinate with the department of health
20 or the department of ecology, as appropriate to the agencies'
21 jurisdiction. In the event that a wastewater company fails to comply
22 with an order of the commission within the deadline specified in the
23 order, the commission may petition the superior court of Thurston
24 county to place the company in receivership pursuant to chapter 7.60
25 RCW.

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

28 (1) Whenever the commission (~~shall~~) finds, after hearing, that
29 any rules, regulations, measurements or the standard thereof,
30 practices, acts or services of any such gas company, electrical
31 company, wastewater company, or water company are unjust, unreasonable,
32 improper, insufficient, inefficient or inadequate, or that any service
33 which may be reasonably demanded is not furnished, the commission shall
34 fix the reasonable rules, regulations, measurements or the standard
35 thereof, practices, acts or service to be thereafter furnished,
36 imposed, observed and followed, and shall fix the same by order or
37 rule.

1 (2) In ordering improvements to the service of any water company,
2 the commission shall consult and coordinate with the department of of
3 health. In the event that a water company fails to comply with an
4 order of the commission within the deadline specified in the order, the
5 commission may request that the department petition the superior court
6 of Thurston county to place the company in receivership pursuant to
7 chapter 7.60 RCW.

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

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

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

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

29 (1) Unless the commission otherwise orders, no change ((shall)) may
30 be made in any rate or charge or in any form of contract or agreement
31 or in any rule or regulation relating to any rate, charge or service,
32 or in any general privilege or facility which shall have been filed and
33 published by a gas company, electrical company, wastewater company, or
34 water company in compliance with the requirements of RCW 80.28.050
35 except after thirty days' notice to the commission and publication for
36 thirty days, which notice ((shall)) must plainly state the changes

1 proposed to be made in the schedule then in force and the time when the
2 change will go into effect and all proposed changes (~~shall~~) must be
3 shown by printing, filing and publishing new schedules, or shall be
4 plainly indicated upon the schedules in force at the time and kept open
5 to public inspection. Proposed changes may be suspended by the
6 commission within thirty days or before the stated effective date of
7 the proposed change, whichever is later. The commission, for good
8 cause shown, may allow changes without requiring the thirty days'
9 notice by duly filing, in such manner as it may direct, an order
10 specifying the changes so to be made and the time when it (~~shall~~)
11 takes effect. All such changes (~~shall~~) must be immediately indicated
12 upon its schedules by the company affected. When any change is made in
13 any rate or charge, form of contract or agreement, or any rule or
14 regulation relating to any rate or charge or service, or in any general
15 privilege or facility, the effect of which is to increase any rate or
16 charge, then in existence, attention (~~shall~~) must be directed on the
17 copy filed with the commission to such increase by some character
18 immediately preceding or following the item in such schedule, such
19 character to be in form as designated by the commission.

20 (2) During a state of emergency declared under RCW 43.06.010(12),
21 the governor may waive or suspend the operation or enforcement of this
22 section or any portion of this section or under any administrative
23 rule, and issue any orders to facilitate the operation of state or
24 local government or to promote and secure the safety and protection of
25 the civilian population.

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

28 (1)(a) Except as provided otherwise in this subsection, no gas
29 company, electrical company, wastewater company, or water company
30 (~~shall~~) may charge, demand, collect or receive a greater or less or
31 different compensation for any service rendered or to be rendered than
32 the rates and charges applicable to such service as specified in its
33 schedule filed and in effect at the time, nor (~~shall~~) may any such
34 company directly or indirectly refund or remit in any manner or by any
35 device any portion of the rates or charges so specified, or furnish its
36 product at free or reduced rates except to its employees and their
37 families, and its officers, attorneys, and agents; to hospitals,

1 charitable and eleemosynary institutions and persons engaged in
2 charitable and eleemosynary work; to indigent and destitute persons; to
3 national homes or state homes for disabled volunteer soldiers and
4 soldiers' and sailors' homes(~~(: PROVIDED, That the term)~~).

5 For the purposes of this subsection (1):

6 (i) "Employees" (~~(as used in this paragraph shall)~~) includes
7 furloughed, pensioned and superannuated employees, persons who have
8 become disabled or infirm in the service of any such company; and (~~(the~~
9 ~~term)~~)

10 (ii) "Families(~~(,)~~)" (~~(as used in this paragraph, shall)~~) includes
11 the families of those persons named in this proviso, the families of
12 persons killed or dying in the service, also the families of persons
13 killed, and the surviving spouse prior to remarriage, and the minor
14 children during minority of persons who died while in the service of
15 any of the companies named in this (~~(paragraph: PROVIDED FURTHER,~~
16 ~~That)~~) subsection (1).

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

20 (c) Gas companies, electrical companies, wastewater companies, and
21 water companies may charge the defendant for treble damages awarded in
22 lawsuits successfully litigated under RCW 80.28.240.

23 (2) No gas company, electrical company, wastewater company, or
24 water company (~~(shall)~~) may extend to any person or corporation any
25 form of contract or agreement or any rule or regulation or any
26 privilege or facility except such as are regularly and uniformly
27 extended to all persons and corporations under like circumstances.

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

30 No gas company, electrical company, wastewater company, or water
31 company (~~(shall)~~) may make or grant any undue or unreasonable
32 preference or advantage to any person, corporation, or locality, or to
33 any particular description of service in any respect whatsoever, or
34 subject any particular person, corporation or locality or any
35 particular description of service to any undue or unreasonable
36 prejudice or disadvantage in any respect whatsoever.

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

3 No gas company, electrical company, wastewater company, or water
4 company (~~shall~~) may, directly or indirectly, or by any special rate,
5 rebate, drawback or other device or method, charge, demand, collect or
6 receive from any person or corporation a greater or less compensation
7 for gas, electricity, wastewater company services, or water, or for any
8 service rendered or to be rendered, or in connection therewith, except
9 as authorized in this chapter, than it charges, demands, collects or
10 receives from any other person or corporation for doing a like or
11 contemporaneous service with respect thereto under the same or
12 substantially similar circumstances or conditions.

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

15 Every gas company, electrical company, wastewater company, or water
16 company, engaged in the sale and distribution of gas, electricity or
17 water or the provision of wastewater company services, shall, upon
18 reasonable notice, furnish to all persons and corporations who may
19 apply therefor and be reasonably entitled thereto, suitable facilities
20 for furnishing and furnish all available gas, electricity, wastewater
21 company services, and water as demanded, except that a water company
22 (~~shall~~) may not furnish water contrary to the provisions of water
23 system plans approved under chapter 43.20 or 70.116 RCW and wastewater
24 companies may not provide services contrary to the approved general
25 sewer plan.

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

28 Every gas, water, wastewater, or electrical company owning,
29 operating or managing a plant or system for the distribution and sale
30 of gas, water or electricity, or the provision of wastewater company
31 services to the public for hire (~~shall be~~) is, and (~~be~~) is held to
32 be, a public service company as to such plant or system and as to all
33 gas, water, wastewater company services, or electricity distributed or
34 furnished therefrom, whether such gas, water, wastewater company
35 services, or electricity be sold wholesale or retail or be distributed
36 wholly to the general public or in part as surplus gas, water,

1 wastewater company services, or electricity to manufacturing or
2 industrial concerns or to other public service companies or
3 municipalities for redistribution. Nothing in this title (~~shall~~) may
4 be construed to prevent any gas company, electrical company or water
5 company from continuing to furnish its product or the use of its lines,
6 equipment or service under any contract or contracts in force on June
7 7, 1911, at the rates fixed in such contract or contracts(~~PROVIDED,~~
8 ~~That~~). However, the commission (~~shall have~~) has power, in its
9 discretion, to direct by order that such contract or contracts
10 (~~shall~~) be terminated by the company party thereto and thereupon such
11 contract or contracts (~~shall~~) must be terminated by such company as
12 and when directed by such order.

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

15 Whenever the commission (~~shall~~) finds, after hearing had upon its
16 own motion or upon complaint, that repairs or improvements, to, or
17 changes in, any gas plant, electrical plant, system of sewerage, or
18 water system ought to be made, or that any additions or extensions
19 should reasonably be made thereto, in order to promote the security or
20 convenience of the public or employees, or in order to secure adequate
21 service or facilities for manufacturing, distributing or supplying gas,
22 electricity, wastewater company services, or water, the commission may
23 enter an order directing that such reasonable repairs, improvements,
24 changes, additions or extensions of such gas plant, electrical plant,
25 system of sewerage, or water system be made.

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

28 The commission may develop and enter into an agreement with a
29 county to carry out the regulatory functions of this chapter with
30 regard to water companies or wastewater companies located within the
31 boundary of that county. The duration of the agreement, the duties to
32 be performed, and the remuneration to be paid by the commission are
33 subject to agreement by the commission and the county.

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

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

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

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

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

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

13 (e) Use or receive the direct benefit of all or a portion of the
14 utility service with knowledge of, or reason to believe that, the
15 diversion, tampering, or unauthorized connection existed at the time of
16 the use or that the use or receipt was without the authorization or
17 consent of the utility.

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

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

29 (4) As used in this section:

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

32 (b) "Divert" means to change the intended course or path of
33 electricity, gas, or water without the authorization or consent of the
34 utility;

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

37 (d) "Reconnection" means the commencement of utility service to a

1 customer or other person after service has been lawfully disconnected
2 by the utility;

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

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

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

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

14 The commission's jurisdiction over the rates, charges, practices,
15 acts or services of any water company (~~shall~~) or wastewater company
16 includes any aspect of line extension, service installation, or service
17 connection. If the charges for such services are not set forth by
18 specific amount in the company's tariff filed with the commission
19 pursuant to RCW 80.28.050, the commission shall determine the fair,
20 just, reasonable, and sufficient charge for such extension,
21 installation, or connection. In any such proceeding in which there is
22 no specified tariffed rate, the burden (~~shall be~~) is on the company
23 to prove that its proposed charges are fair, just, reasonable, and
24 sufficient.

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

27 A water company or a wastewater company assuming responsibility for
28 a water system or system of sewerage that is not in compliance with
29 state or federal requirements (~~for public drinking water systems~~),
30 and its agents and employees, are immune from lawsuits or causes of
31 action, based on noncompliance with state or federal requirements (~~for~~
32 ~~public drinking water systems~~), which predate the date of assuming
33 responsibility and continue after the date of assuming responsibility,
34 provided that the water company or wastewater company has submitted and
35 is complying with a plan and schedule of improvements approved by the
36 department of health or the department of ecology, as appropriate to

1 the agencies' jurisdiction. This immunity (~~shall~~) expires on the
2 earlier of the date the plan of improvements is completed or four years
3 from the date of assuming responsibility. This immunity does not apply
4 to intentional injuries, fraud, or bad faith and is subject to the
5 provisions of law governing clean water as referenced by the commission
6 by rule.

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

9 (1) A receiver may be appointed by the superior court of this state
10 in the following instances, but except in any case in which a
11 receiver's appointment is expressly required by statute, or any case in
12 which a receiver's appointment is sought by a state agent whose
13 authority to seek the appointment of a receiver is expressly conferred
14 by statute, or any case in which a receiver's appointment with respect
15 to real property is sought under (b)(ii) of this subsection, a receiver
16 shall be appointed only if the court additionally determines that the
17 appointment of a receiver is reasonably necessary and that other
18 available remedies either are not available or are inadequate:

19 (a) On application of any party, when the party is determined to
20 have a probable right to or interest in property that is a subject of
21 the action and in the possession of an adverse party, or when the
22 property or its revenue-producing potential is in danger of being lost
23 or materially injured or impaired. A receiver may be appointed under
24 this subsection (1)(a) whether or not the application for appointment
25 of a receiver is combined with, or is ancillary to, an action seeking
26 a money judgment or other relief;

27 (b) Provisionally, during the pendency of any action to foreclose
28 upon any lien against or for forfeiture of any interest in real or
29 personal property, or after notice of a trustee's sale has been given
30 under RCW 61.24.040, or after notice of forfeiture has been given under
31 RCW 61.30.040, on application of any person, when the interest in the
32 property that is the subject of foreclosure or forfeiture of the person
33 seeking the receiver's appointment is determined to be probable and
34 either:

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

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

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

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

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

12 (f) If and to the extent that property is subject to execution to
13 satisfy a judgment, to preserve the property during the pendency of an
14 appeal, or when an execution has been returned unsatisfied, or when an
15 order requiring a judgment debtor to appear for proceedings
16 supplemental to judgment has been issued and the judgment debtor fails
17 to submit to examination as ordered;

18 (g) Upon an attachment of real or personal property when the
19 property attached is of a perishable nature or is otherwise in danger
20 of waste, impairment, or destruction, or where the abandoned property's
21 owner has absconded with, secreted, or abandoned the property, and it
22 is necessary to collect, conserve, manage, control, or protect it, or
23 to dispose of it promptly, or when the court determines that the nature
24 of the property or the exigency of the case otherwise provides cause
25 for the appointment of a receiver;

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

29 (i) In an action against any person who is not an individual if the
30 object of the action is the dissolution of that person, or if that
31 person has been dissolved, or if that person is insolvent or is not
32 generally paying the person's debts as those debts become due unless
33 they are the subject of bona fide dispute, or if that person is in
34 imminent danger of insolvency;

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

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

38 (l) As provided under RCW 11.64.022;

1 (m) In an action by the department of licensing under RCW
2 18.35.220(3) with respect to persons engaged in the business of
3 dispensing of hearing aids, RCW 18.85.430 in the case of persons
4 engaged in the business of a real estate broker, associate real estate
5 broker, or real estate salesperson, or RCW 19.105.470 with respect to
6 persons engaged in the business of camping resorts;

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

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

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

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

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

20 (s) In an action by the director of financial institutions under
21 RCW 21.20.390 in cases involving actual or threatened violations of the
22 securities act of Washington or under RCW 21.30.120 in cases involving
23 actual or threatened violations of chapter 21.30 RCW with respect to
24 certain businesses and transactions involving commodities;

25 (t) In an action for or relating to dissolution of a business
26 corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or
27 23B.14.320, for dissolution of a nonprofit corporation under RCW
28 24.03.271, for dissolution of a mutual corporation under RCW 24.06.305,
29 or in any other action for the dissolution or winding up of any other
30 entity provided for by Title 23, 23B, 24, or 25 RCW;

31 (u) In any action in which the dissolution of any public or private
32 entity is sought, in any action involving any dispute with respect to
33 the ownership or governance of such an entity, or upon the application
34 of a person having an interest in such an entity when the appointment
35 is reasonably necessary to protect the property of the entity or its
36 business or other interests;

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

1 (w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030,
2 in the case of a bank or trust company or, under and subject to RCW
3 32.24.070 through 32.24.090, in the case of a mutual savings bank;
4 (x) Under and subject to RCW 31.12.637 and 31.12.671 through
5 31.12.724, in the case of credit unions;
6 (y) Upon the application of the director of financial institutions
7 under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable
8 to agricultural lenders, under RCW 31.40.120 in actions to enforce
9 chapter 31.40 RCW applicable to entities engaged in federally
10 guaranteed small business loans, under RCW 31.45.160 in actions to
11 enforce chapter 31.45 RCW applicable to persons licensed as check
12 cashers or check sellers, or under RCW 19.230.230 in actions to enforce
13 chapter 19.230 RCW applicable to persons licensed under the uniform
14 money services act;
15 (z) Under RCW 35.82.090 or 35.82.180, with respect to a housing
16 project;
17 (aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce
18 rights under any revenue bonds issued for the purpose of financing
19 industrial development facilities or bonds of the Washington state
20 housing finance commission, or any financing document securing any such
21 bonds;
22 (bb) Under and subject to RCW 43.70.195, in an action by the
23 secretary of health or by a local health officer with respect to a
24 public water system;
25 (cc) As contemplated by RCW 61.24.030, with respect to real
26 property that is the subject of nonjudicial foreclosure proceedings
27 under chapter 61.24 RCW;
28 (dd) As contemplated by RCW 61.30.030(3), with respect to real
29 property that is the subject of judicial or nonjudicial forfeiture
30 proceedings under chapter 61.30 RCW;
31 (ee) Under RCW 64.32.200(2), in an action to foreclose upon a lien
32 for common expenses against a dwelling unit subject to the horizontal
33 property regimes act, chapter 64.32 RCW;
34 (ff) Under RCW 64.34.364(10), in an action by a unit owners'
35 association to foreclose a lien for nonpayment of delinquent
36 assessments against condominium units;
37 (gg) Upon application of the attorney general under RCW

1 64.36.220(3), in aid of any writ or order restraining or enjoining
2 violations of chapter 64.36 RCW applicable to timeshares;

3 (hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment
4 or performance of municipal bonds issued with respect to facilities
5 used to abate, control, or prevent pollution;

6 (ii) Upon the application of the department of social and health
7 services under RCW 74.42.580, in cases involving nursing homes;

8 (jj) Upon the application of the utilities and transportation
9 commission under RCW 80.28.040, with respect to a water company or
10 wastewater company that has failed to comply with an order of such
11 commission within the time deadline specified therein;

12 (kk) Under RCW 87.56.065, in connection with the dissolution of an
13 irrigation district;

14 (ll) Upon application of the attorney general or the department of
15 licensing, in any proceeding that either of them are authorized by
16 statute to bring to enforce Title 18 or 19 RCW; the securities act of
17 Washington, chapter 21.20 RCW; the Washington commodities act, chapter
18 21.30 RCW; the land development act, chapter 58.19 RCW; or under
19 chapter 64.36 RCW relating to the regulation of timeshares;

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

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

26 (2) The superior courts of this state shall appoint as receiver of
27 property located in this state a person who has been appointed by a
28 federal or state court located elsewhere as receiver with respect to
29 the property specifically or with respect to the owner's property
30 generally, upon the application of the person or of any party to that
31 foreign proceeding, and following the appointment shall give effect to
32 orders, judgments, and decrees of the foreign court affecting the
33 property in this state held by the receiver, unless the court
34 determines that to do so would be manifestly unjust or inequitable.
35 The venue of such a proceeding may be any county in which the person
36 resides or maintains any office, or any county in which any property
37 over which the receiver is to be appointed is located at the time the
38 proceeding is commenced.

1 (3) At least seven days' notice of any application for the
2 appointment of a receiver (~~shall~~) must be given to the owner of
3 property to be subject thereto and to all other parties in the action,
4 and to other parties in interest as the court may require. If any
5 execution by a judgment creditor under Title 6 RCW or any application
6 by a judgment creditor for the appointment of a receiver, with respect
7 to property over which the receiver's appointment is sought, is pending
8 in any other action at the time the application is made, then notice of
9 the application for the receiver's appointment also (~~shall~~) must be
10 given to the judgment creditor in the other action. The court may
11 shorten or expand the period for notice of an application for the
12 appointment of a receiver upon good cause shown.

13 (4) The order appointing a receiver in all cases (~~shall~~) must
14 reasonably describe the property over which the receiver is to take
15 charge, by category, individual items, or both if the receiver is to
16 take charge of less than all of the owner's property. If the order
17 appointing a receiver does not expressly limit the receiver's authority
18 to designated property or categories of property of the owner, the
19 receiver is a general receiver with the authority to take charge over
20 all of the owner's property, wherever located.

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

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

29 After adoption of the sewerage and/or water general plan, all
30 municipal corporations and private utilities within the plan area shall
31 abide by and adhere to the plan for the future development of their
32 systems. A municipal corporation or private utility, including a
33 wastewater company as defined in RCW 80.04.010, may petition for
34 amendments to the plan. Whenever the governing authority of any county
35 or counties or any municipal corporation deems it to be for the public
36 interest to amend the sewerage and/or water general plan for such
37 county or counties, notice (~~shall~~) must be filed with the board or

1 boards of county commissioners. Upon such notice, the board or boards
2 shall initiate consideration of any amendment requested relating to the
3 plan and proceed as provided in this chapter for the adoption of an
4 original plan.

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

8 (2)(a) The commission may collect payments from wastewater
9 companies and other private entities that have notified the commission
10 of their willingness to cover the costs of the rule making. The
11 commission must issue a notice of intent to adopt rules that includes
12 a request that wastewater companies or other private entities notify
13 the commission of their intent to participate in the cost recovery
14 mechanism.

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

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

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

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

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

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

1 NEW SECTION. **Sec. 31.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 32.** Except for section 29 of this act, this act
6 takes effect July 1, 2012.

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